

## 1 LIST OF EXHIBITS

- 2 1. Exhibit 1, attached hereto is a true and correct copy of Arrellano's Arrest Report
- 3 from the November 18, 2006 accident with Tran.
- 4 2. Exhibit 2, attached hereto is a true and correct copy of the San Diego Superior
- 5 Court Complaint for damages against Arrellano et al.
- 6 3. Exhibit 3, attached hereto is a true and correct copy of a January 26, 2007 letter
- 7 from Tran's prior counsel, Anh Q.D. Nguyen to Progressive demanding
- 8 Arrellano's Policy limits. Said letter is attached to the Declaration of Anh Q.D.
- 9 Nguyen.
- 10 4. Exhibit 4, attached hereto is a true and correct copy of a February 2, 2007 letter
- 11 from Progressive to Anh Q.D. Nguyen purporting to be an acceptance of Tran's
- 12 demands for Arrellano's policy limits. Said letter is attached to the Declaration of
- 13 Anh Q.D. Nguyen.
- 14 5. Exhibit 5, attached hereto is a true and correct copy of a March 2, 2007 letter from
- 15 Progressive to Anh Q.D. Nguyen rejecting Tran's policy limit demand. Said letter
- 16 is attached to the Declaration of Anh Q.D. Nguyen.
- 17 6. Exhibit 6, attached hereto is a true and correct copy of a March 15, 2007 letter
- 18 from Progressive to Anh Q.D. Nguyen rejecting Tran's policy limit demand. Said
- 19 letter is attached to the Declaration of Anh Q.D. Nguyen.
- 20 7. Exhibit 7, attached hereto is a true and correct copy of the Proof of Service of the
- 21 Federal Complaint on Tran's guardian ad litem, showing substituted service on a
- 22 Julia Abastillas, co-tenant.
- 23 8. Exhibit 8, attached hereto is a true and correct copy of a May 7, 2008 letter from
- 24 the law firm of Winet, Patrick & Weaver stating that Progressive refused to pay for
- 25 Arrellano's defense in this Federal Action.
- 26 9. Exhibit 9, attached hereto is a true and correct copy of a November 28, 2007 letter
- 27 from Angelo & Di Monda, LLP, wherein Christopher E. Angelo offers to obtain
- 28 independent legal counsel for Arrellano.

1 10. Exhibit 10, attached hereto is a true and correct copy of a November 30, 2007  
2 letter from Randy Winet instructing Angelo & Di Monda, or anyone else, to not  
3 contact Arrellano for any reason.

4 11. Exhibit 11, attached hereto is a true and correct copy of a April 18, 2008 letter  
5 from Randy Winet wherein Mr. Winet states that his law firm also represents AIG  
6 Insurance Company.

7 12. Exhibit 12, attached hereto is a true and correct copy of the Ronald P. Funnel  
8 declaration submitted to this Court in support of Progressive's Application for  
9 default judgment against Arrellano, wherein Mr. Funnel provides this Court with  
10 only part of the documentary evidence related to Tran's policy limit demand on  
11 Progressive and Progressive's response.

12 13. Exhibit 13, attached hereto is a true and correct copy of a March 14, 2007 letter  
13 from Anh Q.D. Nguyen to Progressive. Said letter is attached to the Declaration of  
14 Anh Q.D. Nguyen.

15  
16  
17 May 13, 2008

18 ANGELO & DI MONDA, LLP

19  
20 S/Joseph Di Monda  
Joseph Di Monda  
21 Attorneys fro Bun Tran

1 Anh Q. D. Nguyen, SBN: 176255  
2 Law Offices of Anh Q. D. Nguyen & Associates  
3 15622 Brookhurst Street  
4 Westminster, CA 92683  
5 (714) 531-8181 [TEL]  
6 (714) 531-9397 [FAX]

5 Attorneys for Defendant:  
6 BUN BUN TRAN

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 PROGRESSIVE WEST INSURANCE  
11 COMPANY, an Ohio corporation.

Case No.: 07-CV1999  
JAH (POR)

12 Plaintiff(s),  
vs.

14 BUN BUN TRAN, ARRELLANO.

15 Defendants.

DECLARATION OF ANH Q. D.  
NGUYEN RE DEFENDANT BUN BUN  
TRAN'S OPPOSITION TO  
PLAINTIFF'S APPLICATION TO  
ENTER DEFAULT AGAINST  
LEONEL ARRELLANO

Time: 2:30 p.m.  
Date: June 2, 2008  
Ctrm: 11  
880 Front Street  
San Diego, CA 92101

20 TO THE COURT:

21 I, Anh Q. D. Nguyen, declare as follows:

22 I am an attorney at law duly admitted to practice as such  
23 before all Courts of the State of California and am a principle  
24 in the law firm of ANH Q. D. NGUYEN & ASSOCIATES, attorneys of  
25 record for Plaintiff BUN BUN TRAN in this matter. If called as  
26 a witness, I could and would competently testify to the  
27 following facts of my own personal knowledge.

28 1. On January 22, 2007, I was representing Bun Bun Tran  
by and through his mother and also his guardian, Le Thi Nguyen;

1 and Le Thi Nguyen signed a retainer on the behalf of Bun Bun  
2 Tran on January 22, 2007;

3 2. On January 26, 2007, I sent a policy limit demand to  
4 Progressive Insurance Company after I was retained by Le Thi  
5 Nguyen to represent Bun Bun Tran's interest as a result of the  
6 accident of November 18, 2006. Attached as Exhibit "1";

7 3. My Exhibit "1" letter has conditions incorporated in  
8 it;

9 4. In response to my Exhibit "1" letter, Progressive  
10 Insurance Company sent to me its letter of February 02, 2007. A  
11 true copy of that letter is attached as Exhibit "2";

12 5. As the Court can see, Progressive Insurance Company's  
13 Exhibit "2" letter is a counter-offer, not an acceptance of my  
14 Exhibit "1" offer because Progressive Insurance Company's  
15 Exhibit "2" letter never addresses my Exhibit "1" conditions;

16 6. Shortly thereafter, Progressive Insurance Company  
17 withdrew its Exhibit "2" counter-offer in the form of March 02,  
18 2007 letter, a true and correct copy of which is attached hereto  
19 as Exhibit "3". As the Court can see, this Exhibit "3" letter  
20 expressly withdraws Progressive Insurance Company's earlier  
21 \$15,000.00 unconditional counter-offer;

22 7. In response to Progressive Insurance Company's letter  
23 dated March 02, 2007 (Exhibit "3"), on March 14, 2007, I sent by  
24 mail and fax another letter to Progressive Insurance Company. A  
25 true copy of that letter is attached as Exhibit "4";

26 8. Shortly thereafter, Progressive Insurance Company sent  
27 another letter dated March 15, 2007, in which it again  
28 acknowledges that it rejected my conditional policy limit letter

1 (Exhibit "1") by way of making its own new March 15, 2007  
2 counter-offer. A true and correct copy of which is attached  
3 hereto as Exhibit "5"

4 9. At no time before even today has Progressive Insurance  
5 Company ever responded orally or in writing to my Exhibit "1"  
6 policy limit letter.

7 10. I declare under the penalty of perjury under the laws  
8 of California that the above statements are truthful and correct  
9 to the best of my knowledge.

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11

Respectfully Submitted

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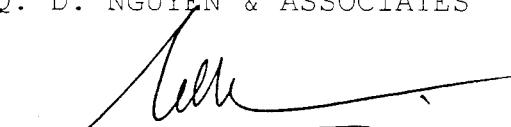
Dated: 4/25/2008

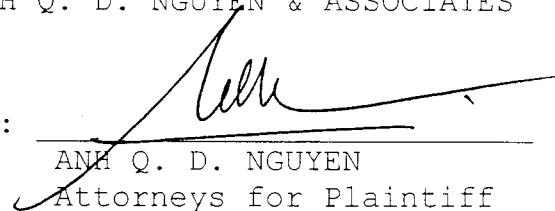
ANH Q. D. NGUYEN & ASSOCIATES

14

15

BY:

  
ANH Q. D. NGUYEN

  
Attorneys for Plaintiff  
BUN BUN TRAN, By and Through  
his Guardian Ad Litem, LE THI  
NGUYEN

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# EXHIBIT I

LAW OFFICES OF  
ANH QUOC DUY NGUYEN & ASSOCIATES

Branch Offices:

SAN GABRIEL  
1015 E. LAS TUNAS DRIVE  
SAN GABRIEL, CA 91776  
PHONE: (626) 286-2239

SAN DIEGO  
4745 EL CAJON BLVD., SUITE 101  
SAN DIEGO, CA 92126  
PHONE: (619) 284-0800

15622 BROOKHURST STREET  
WESTMINSTER, CALIFORNIA 92683

PHONE: (714) 531-8181  
FAX: (714) 531-9397

RESPOND TO:

- WESTMINSTER OFFICE
- SAN GABRIEL OFFICE
- SAN DIEGO

January 26, 2007

Tiara Foster, Claims Representative  
Progressive Insurance Company  
6131 Orangethorpe Avenue, Suite 300  
Buena Park, CA 90620  
714.736.6300 general phone  
714.736.6321 direct  
714.736.6308 fax

Via Certified Mail with Return Receipt  
and Fax to: (714)736-6308

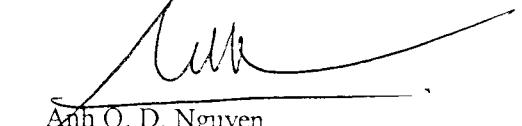
Re: My Client:	Bun Bun Tran
Your Insured/Defendant:	Leonel Arrellano
Date of Accident:	November 18, 2006
Your Claim No.:	060409287

Dear Ms. Foster:

Please be advised that I represent Bun Bun Tran, who was seriously injured because of your insured running a stop sign. Thereafter, your insured fled from the scene. He has been arrested and is currently awaiting a criminal hearing in February of this year. My client has been hospitalized at UC San Diego, Floor 8 East, Room 812A, in a comatose condition since November 18, 2006. I understand that you have learned about his condition and the facts behind this accident from Esurance, the auto insurance company of Bun Bun Tran. You therefore know that the medical expenses are approaching \$700,000 and Progressive has insufficient amounts of liability insurance.

My client is represented by his mother/guardian, Le Thi Nguyen. My client is hereby willing to be responsible for any and all medical and other liens so long as Progressive tenders all of its liability limits within 15 days from the date of this letter subject to the further condition precedent of convincing me that there are no other responsible parties, whether insured or not, causing this accident. If I am convinced, I will state as much in a letter. If I am not convinced, I will never state as much in a letter and there will be no settlement. Please also tell me, since it may bear on settlement, whether or not your insured received liquor at a Chili's restaurant shortly before the accident, and if so, which Chili's restaurant. We understand that Chili's was your insured's employer at the time of the accident.

Very truly yours,

  
Anh Q. D. Nguyen

# EXHIBIT 2

**PROGRESSIVE**

Claims Office  
 6131 Orangethorpe Ave. Ste 300  
 Buena Park, CA 90620  
 Telephone: 714-736-6300  
 Facsimile: 714-736-6308

Underwritten by: **Progressive West Insurance Company**  
 Claim number: 060409287  
 Date of loss: 11/18/2006  
 Today's date: 02/02/2007

Law Offices Of Anh Q.D. Nguyen & Assoc  
 Attn: Anh Nguyen  
 15622 Brookhurst Street  
 Westminster, CA 92683

Your Client: Bun Bun Tran

Dear Mr. Nguyen:

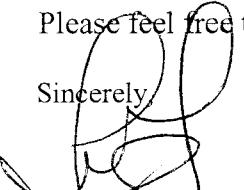
This will confirm our offer of \$15000 to settle your client's claim. Please be advised that this offer represents the policy limit. For your review, we have enclosed a copy of the declaration page.

You requested information regarding our insured's relationship with Chili's Restaurant and if he was served alcohol at this location. Unfortunately, we have not been able to locate our insured; therefore, we do not have a recorded statement from our insured regarding the facts of this loss.

Please convey this offer to your client(s) and advise me of the decision at your earliest convenience.

Please feel free to call with any questions or concerns.

Sincerely,

  
 Tiara R Foster, Ext.6321  
 Claims Specialist

[tiara\\_r\\_foster@progressive.com](mailto:tiara_r_foster@progressive.com)

TXF/tf

NEW CHOICE INS SRVCS  
1510-C SWEETWATER RD  
NATIONAL CITY, CA 91950



LEONEL ARELLANO  
4128 WABASH AVE #18  
SAN DIEGO, CA 92104

## Auto Insurance Coverage Summary

### This is your Renewal Declarations Page

**Policy number: 16558999-1**

Underwritten by:

Progressive West Insurance Company

November 1, 2006

Policy Period: Nov 30, 2006 - May 30, 2007

Page 1 of 2

**619-477-8523**

**NEW CHOICE INS SRVCS**

Contact your agent for personalized service.

**driveinsurance.com**

**Online Service**

Make payments, check billing activity, update  
policy information or check status of a claim.

**800-925-2886**

To report a claim.

The coverages, limits and policy period shown apply only if you pay for this policy to renew.

Your coverage begins on November 30, 2006 at 12:01 a.m. This policy expires on May 30, 2007 at 12:01 a.m.

Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9610A CA (11/05). The contract is modified by form 2080 CA (11/05).

#### Underwriting Company

Progressive West Insurance Company

#### Drivers and household residents

	Years Licensed	Years Experienced	Marital Status
LEONEL ARELLANO	00	06	Married
Additional Information:	Named insured		
FELIXA ARELLANO	00	00	Married
Additional Information:	excluded driver		

#### Important information regarding excluded drivers

This policy provides no coverage for any claim arising from an accident or loss involving a motorized vehicle being operated by any person shown as an excluded driver on this Auto insurance coverage summary (declarations page).

#### Outline of coverage

##### 2000 Ford F150 4C

VIN: 1F1RX18L4YKA65960

Garaging zip code: 92104

Annual miles: 08500

Vehicle use: Pleasure

Premium

	Limits	Descrip	Premium
Liability to Others	\$15,000 each person/\$30,000 each accident		\$350
Bodily Injury Liability			
Property Damage Liability	\$30,000 each accident		
Uninsured/Undeinsured Motorist	Rejected		
Comprehensive	Actual Cash Value	\$500	135
Collision	Actual Cash Value	\$500	284
<b>Subtotal policy premium</b>			<b>\$769.00</b>
Anti-fraud fee			0.96
<b>Total 6 month policy premium</b>			<b>\$769.96</b>

Policy number 16553995-1  
LEONE ARELLANO  
Page 2 of 2

#### Lienholder information

## Utenholden

CREDIT ONE  
2333 N BROADWAY STE 130 SANTA ANA, CA 92076  
2020 Ford F-150 4C (1HFLX18L4YKA65960)

#### Your Right to Advance Notice of Renewal

California law requires insurers to provide either an offer to renew at least 20 days before policy expiration or a written notice of nonrenewal at least 30 days before expiration. If we fail to give this offer or notice in the specified timeframes listed above, the existing policy with no changes in its terms and conditions, will remain in effect for 30 days from the date that either the offer to renew or the notice of nonrenewal is mailed to you. However, your policy shall terminate on the effective date of any other replacement or succeeding automobile insurance policy with respect to any automobile designated in both policies, even if you do not receive a timely offer to renew or notice of nonrenewal.

### Company officers

Mark H. Nease

President

Dane L. Shallow

Secretary

# EXHIBIT 3

Claims Office  
1455 Frazee Rd. Suite 200  
San Diego, CA 92108  
Telephone: 408-281-5100  
Facsimile: 408-224-5007

Underwritten by: **Progressive West Insurance Company**

Claim number: 060409287  
Date of loss: 11/18/2006  
Today's date: 03/02/2007

Law Offices Of Anh Q.D. Nguyen & Assoc  
Attn: Anh Nguyen  
15622 Brookhurst Street  
Westminster, CA 92683

Your Client: Bun Tran

We wish to acknowledge receipt of the information/documentation which you have provided in reference to the above captioned claim. In our effort to investigate and evaluate this claim, we will need additional time to make a final determination. Please note the reason(s) listed for additional time: We are waiting for a demand from the City of San Diego for their property damage.

A determination on your claim cannot be made until the following event, process, or determination is made: The City of San Diego must send their demand for property damage. We will be in contact with you to advise you of the progress of our investigation.

In the interim, if you have any questions or other information that has relevance to our consideration of your claim, please contact the undersigned.

Sincerely,

Kendra R Turner, Ext.3329  
Claims Representative

[kendra\\_turner@progressive.com](mailto:kendra_turner@progressive.com)

KRT/kt

**EXHIBIT 4**

LAW OFFICES OF  
**ANH QUOC DUY NGUYEN & ASSOCIATES**

Branch Offices:

1015 E. LAS TUNAS DR.  
SAN GABRIEL, CA. 91776  
PHONE: (626) 286-2239

4745 EL CAJON BLVD.  
SUITE 101  
SAN DIEGO, CA. 92115  
PHONE: (619) 284-0800

15622 BROOKHURST STREET  
WESTMINSTER, CA 92683

PHONE: (714) 531-8181  
FAX: (714) 531-9397

ANH Q.D. NGUYEN

March 14, 2007

Kendra R. Turner, Claims Representative  
Progressive West Insurance Company  
1455 Frazee Road, Suite 200  
San Diego, CA 92108  
408.281.5100 x3329  
408.224.5007 fax  
kendra\_turner@progressive.com

Re:	My Client:	Bun Bun Tran
	Your Claim No.	060409287
	Date of Loss:	November 18, 2006
	Your Insured:	Leonel Arrellano

Dear Ms. Turner:

I have received your March 2, 2007 letter, which I must reject in its entirety. Firstly, you have never asked for an extension to my previous policy limits offers nor have you asked in your March 2, 2007 letter for a reinstatement of any policy limits settlement offer on behalf of my client from my office.

Your March 2, 2007 letter merely states that you are just now making an "effort to investigate and evaluate this claim." You also admit in this letter that you are "waiting for a demand from the City of San Diego for their property damage." When did you first become aware of any potential claim against your insured by the City of San Diego? Was it after a governmental tort claim was made against the City of San Diego? Have you also become aware, through the City of San Diego, of a criminal prosecution against Leonel Arrellano in which he has pled guilty and where he remains incarcerated? When did you first make an effort to obtain a police report for this accident? Enclosed is an extra copy of the police report, which my office obtained but which you never requested or discussed. How is it that you must still "investigate and evaluate"? How is it that my client is supposed to wait around for you to determine when it is convenient to advise us "of the progress of [your] investigation?"

As to the last paragraph of your March 2, 2007 letter, my above questions and enclosed police report is in response to your letter statement: "If you have any questions or other information that

has relevance to our consideration of your claim, please contact the undersigned.” Please limit all of your future communications with my office to letter form. I sadly regret the arrogant and dismissive nature of your March 2, 2007 letter. The City of San Diego’s alleged property damage claim could have been paid out of the money received from the Victims of Crime Fund. Your company’s typical inability to communicate, except through form letters, has resulted in your insured remaining as a defendant in larger litigation. My office would have dismissed all claims against the world had Progressive West Insurance Company only been prompt, timely and polite.

Very truly yours,



Anh Q. D. Nguyen

Enclosure: Copy of Traffic Collision Report

# EXHIBIT 5

**PROGRESSIVE**

6131 Telegraph Road, Buena Park, CA 90620  
(714) 736-6300  
facsimile (714) 690-9730

*progressive.com*

March 15, 2007

Law Offices of Anh Q.D. Nguyen & Associates  
15622 Brookhurst Street  
Westminster, CA 92683

Attention: Anh Nguyen, Esq.

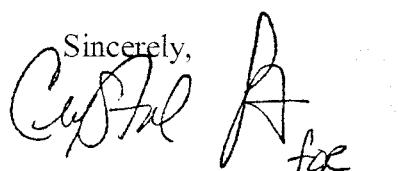
Claim Number : 060409287  
Date of Loss : November 18, 2006  
Your Client : Tran, Bun

Dear Mr. Nguyen:

We are unable to accept or deny your client's claim until we receive the following information:

1. The status regarding our offer in the amount of \$15,000 (policy limits offer) to resolve your client's pending Bodily Injury claim.

Please furnish the requested items to our office immediately. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,  


Tiara Foster  
Claims Specialist Senior  
On Behalf of Progressive West Insurance Company  
(714) 736-6321  
email: [tiara\\_r\\_foster@progressive.com](mailto:tiara_r_foster@progressive.com)

TF/clf

## LIST OF EXHIBITS

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- 14 Anh Q.D. Nguyen.

15  
16  
17 May \_\_\_\_\_, 2008

18 ANGELO & DI MONDA, LLP

19 \_\_\_\_\_  
20 S/Joseph Di Monda  
Joseph Di Monda  
21 Attorneys fro Bun Tran  
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# EXHIBIT 1

SAN DIEGO REGIONAL  
ARREST / JUVENILE CONTACT REPORT

ARREST REPORT		AGENCY SDPD	ARJS ASSISTED ? <input type="checkbox"/> N	PAGE 1 OF 6	AGENCY NUMBER 06110036325
WARRANT None	BEAT DISTRICT 838	RELATED REPORTS (TYPE NUMBER)		SDSD BOOKING NUMBER 6455575	
CITATION NUMBER					
CHARGE(S) 23153 / VC / DRIVING UNDER THE INFLUENCE W/ INJURY <input type="checkbox"/> Y					
PERSON ARRESTED (L F M) ARRELLANO LEONEL					
NICKNAME			DOB 03/03/1983	POB GARERO MEXICO	
RACE W	SEX M	AGE 23	HEIGHT 5 08"	WEIGHT 150	BUILD NOR
HAIR BRO					
EYES BRO					
ALIAS/MAIDEN NAME (L F M)					
ARRESTEE'S ADDRESS 4128 WABASH AV			CITY SAN DIEGO		STATE ZIP CA 92104
EMPLOYER/SCHOOL CHILIS		MILITARY <input type="checkbox"/> N	OCCUPATION/RANK PREP COOK	HOME PHONE (619)886-1958	BUSINESS PHONE
BUSINESS OR MILITARY ADDRESS			CITY		STATE ZIP
EMERGENCY CONTACT/NEXT OF KIN (L F M)					
EMERGENCY ADDRESS					
HOME PHONE	IS SUBJECT A SUSPECTED USER OF NARCOTICS/DRUG ? <input type="checkbox"/> N		INTERPRETER REQUIRED ? <input type="checkbox"/> Y	LANGUAGE Spanish	SUSPECT'S RELATION TO VICTIM(S)
LOCATION OF ARREST 4100 WABASH AV					
CITY SAN DIEGO					
LOCATION OF OFFENSE 2200 COMMONWEALTH AV					
CITY SAN DIEGO					
OFFENSE DATE 11/18/2008	OFFENSE TIME 01 06	CITIZEN <input type="checkbox"/> ARREST ? <input type="checkbox"/> N	ARRESTING OFFICER K Lewak	ID 5061	ADMONISHED BY Sgt Lara
ID 5591					
DID YOU UNDERSTAND EACH OF THESE RIGHTS THAT I HAVE EXPLAINED TO YOU ? SI					
HAVING IN MIND AND UNDERSTANDING YOUR RIGHTS AS I HAVE TOLD YOU ARE YOU WILLING TO TALK WITH US ? SI					
STATEMENT <input type="checkbox"/>					
HAIR LENGTH/TYPE 5 Short 6 Thick					
HAIR STYLE 8 Straight					
FACIAL HAIR 4 Goatee 6 Mustache					
COMPLEXION 5 Medium					
SPEECH 1 Accent					
VOICE 5 Medium					
IDENTIFICATION NUMBERS					
DRIVER'S LICENSE NO					
ST. TC					
SOCIAL SECURITY NO					
FBI NO					
CRIM NO					
OTHER ID					
TYPE					
FURTHER SUSPECT DESCRIPTION (IE GLASSES TATTOOS TEETH BIRTHMARKS JEWELRY SCARS MANNERISMS ETC) SCAR ON CHEEK ROUND					
UNDOCUMENTED PERSON ? <input type="checkbox"/> Y					
CLOTHING DESCRIPTION BROWN T-SHIRT TRACK SUIT TROUSERS FLIP-FLOP TYPE SANDLES					
SUSPECT VEHICLE	YEAR 2000	MAKE FORD	MODEL F250	COLOR/COLOR WHITE/WHITE	BODY TYPE PICKUP
LICENSE NO 7X43B95				STATE CA	
ADDITIONAL VEHICLE IDENTIFIERS (CHROME DAMAGE ETC)					
VIN NUMBER 1FTRX1BL4YKA85960				DISPOSITION OF VEHICLE CD TOWING-EVIDENCE	
REGISTERED OWNER (L F M) ARRELLANO LEONEL					
REGISTERED OWNER'S ADDRESS 4128 WABASH AV					
CITY SAN DIEGO					
STATE ZIP CA 92104					
PROPERTY TAG NO B06-4983					
DISPOSITION OF EVIDENCE RM 138 IMPOUNDS					
REPORTING OFFICER K Lewak					
ID 5061		DIVISION T-DUI	REPORT DATE 11/18/2008	TIME 22:34	
DR. McCall 10-293					

COMPANION'S NAME (L/F/M)				CITY			STATE ZIP			
ADDRESS										
PHONE		RACE	SEX	DOB	ARRESTED <input type="checkbox"/>		ADDITIONAL COMPANIONS LISTED <input type="checkbox"/>			
VICTIM/WITNESS NAME (L/F/M)										
RESIDENT ADDRESS				CITY			STATE ZIP			
BUSINESS ADDRESS				CITY			STATE ZIP			
H.P. HOME PHONE		BUSINESS PHONE		RACE	SEX	DOB	ADDL VICT/WIT LISTED <input type="checkbox"/>			
W				W	F		N			
FATHER/STEPFATHER'S NAME (L/F/M)										
FATHER/STEPFATHER'S ADDRESS										
CITY			STATE ZIP			HOME PHONE				
MOTHER/STEPMOTHER'S NAME (L/F/M)										
MOTHER/STEPMOTHER'S ADDRESS										
CITY			STATE ZIP			BUSINESS PHONE				
SCHOOL			GRADE LIVES WITH							
PARENTS NOTIFIED BY WHOM AND HOW					DATE		TIME		RELEASE DATE	RELEASE TIME
FIELD DISP										
ATTITUDE OF JUVENILE				ATTITUDE OF PARENTS/GUARDIAN						
DET DISPO <input type="checkbox"/> Refer Court/Prob		<input type="checkbox"/> Dept Diversion		<input type="checkbox"/> Counsel/Informal		<input type="checkbox"/> Other				
ADDITIONAL CHARGE(S) 12500/V/C/UNLAWFUL TO DRIVE UNLESS LICEN 20001(A)/V/C/HIT AND RUN DEATH OR INJURY										
I have arrested _____										
I know that pursuant to Section 849 of the Penal Code of the State of California it is necessary for me to sign a complaint stating the charge against the prisoner which complaint must be made before a magistrate and I agree to sign said complaint and appear in said matter without delay										
Date _____		Computer generated form signature is not obtained disclaimer read to the citizen								
ARRESTING CITIZEN (L/F/M) PRINT										
RESIDENT ADDRESS				CITY			STATE ZIP			
BUSINESS ADDRESS				CITY			STATE ZIP			
HOME PHONE		BUSINESS PHONE		RACE	SEX	DOB				
Check each reason for not releasing the subject with a written notice to appear <span style="float: right;">(ADULTS ONLY)</span>										
<input type="checkbox"/> Violent Crime <input type="checkbox"/> Sex Offense <input type="checkbox"/> Drug Offense <input type="checkbox"/> Robbery <input type="checkbox"/> Burglary <input type="checkbox"/> Arson <input type="checkbox"/> Kidnapping <input type="checkbox"/> Murder <input type="checkbox"/> Disruptive to Court <input type="checkbox"/> Disruptive to Jury <input type="checkbox"/> Disruptive to Police <input type="checkbox"/> Disruptive to Sheriff <input type="checkbox"/> Disruptive to Probation <input type="checkbox"/> Disruptive to Sheriff's Office <input type="checkbox"/> Disruptive to Sheriff's Deputies <input type="checkbox"/> Disruptive to Sheriff's Office Staff <input type="checkbox"/> Disruptive to Sheriff's Deputies Staff <input type="checkbox"/> Disruptive to Sheriff's Office Staff Staff <input type="checkbox"/> Disruptive to Sheriff's Deputies Staff Staff Staff										

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060002

Page  
3 of 6

Case Number

Code Section And Description (one incident only)  
23153 VC / DRIVING UNDER THE INFLUENCE W/Date  
11/18/2008Day of Week  
SATTime  
02 35Location Of Incident (Or Address)  
2300 COMMONWEALTH AV

City

District Beat

Person(s) Involved Victim

Suspect (If Named)  
ARRELLANO LEONELProperty Tag No (s)  
B06-4983**SYNOPSIS:**

Arrellano struck a car as he drove through an intersection. The driver Arrellano struck sustained serious injuries. Arrellano drove away without contacting the injured driver. Arrellano has no license and is not in the country legally. Arrellano was driving under the influence of alcohol at the time of the collision.

**ORIGIN**

I was contacted by my supervisor, Traffic Sgt Mike McCollough (ID No 2934) whilst I was at the Traffic Division Trailers and asked to assist with a hit and run collision that involved a drinking driver. I responded at 0141 hours from Traffic Division, arriving at 3500 Juniper Street at about 0151 hours.

**VEHICLE ACTIONS:**

Arrellano, P1, was driving south on Commonwealth Avenue towards Juniper Street. The two streets intersect at right angles, and traffic on Commonwealth is controlled by stop signs. Juniper Street, an east-west street, has no controls at the intersection. Bun Bun Tran, the driver of the other involved vehicle, P2, was driving east on Juniper Street. P1 failed to stop for the stop sign on Commonwealth, and broadsided P2. The impact caused P2 to rotate counter-clockwise and come to rest on the southeast corner sidewalk of the intersection. P1 came to rest on the east sidewalk of Commonwealth Ave, south of Juniper Street, before P1 fleeing the scene in his vehicle.

**DRIVER IDENTIFICATION:**

Arrellano was identified as the driver of the white Ford Pickup by his statements (both pre and post Miranda Admonishment), indicating he had been the driver at the time of the collision. Additionally [REDACTED] a witness, was brought to the scene and identified Arrellano as the driver she had seen drive away from the collision.

**INVESTIGATION:**

At the collision scene I spoke with Traffic Sgt A. Doherty III, (ID No 3401). He informed me that the driver that had fled the collision scene had been detained at 4100 Wabash Avenue. Before leaving to contact the driver I spoke to one of the witnesses, [REDACTED] provided a brief statement (See below for details.)

I responded to the west alley of 4100 Wabash Avenue.

There I spoke to Sgt A. Massey (ID No 1596) who told me he had driven up the alley to see a Hispanic male exiting a vehicle which matched the suspect vehicle description. Sgt Massey detained the driver and pointed out a patrol car where the driver was seated.

Reporting Officer K Lewak	ID # 5061	Division T-DUI	Approved By [Signature] Massey	Date of Report 11/18/2008	Time 22 34
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060003

Page 4 of 6	Case Number		
Code Section And Description (one incident only) 23193 1/VC / DRIVING UNDER THE INFLUENCE W/W	Date 11/18/2008	Day of Week SAT	Time 02 33
Location Of Incident (Or Address) 2300 COMMONWEALTH AV	City	District	Beat
Person(s) Involved Victim			
Suspect (If Named) ARRELLANO LEONEL			
Property Tag No (s) B06-4983			

Opening the door for the driver I asked him to step out. I noticed he was handcuffed. I removed the handcuffs and told the driver, (later identified as Leonel Arrellano by his Mexican Consulate Identification Card), that he was not under arrest, but he was not free to leave. I asked him if he understood and he told me he did. I spoke to him in English. I explained that I was there to make sure he was ok to drive, as he had been drinking. I had Arrellano walk to the opposite side of the patrol car as the ground was level there.

#### **DRIVER EVALUATION:**

I explained in Spanish what I wanted Arrellano to do in order to check his eyes for HGN. Twice I had to tell him to hold his head still before he was able to hold it still. As we conversed, I could smell that Arrellano had been drinking. Additionally his eyes were red and watery. About this time Sgt. Lara (ID No 5591) arrived and assisted me with interviewing Arrellano.

I asked Arrellano in Spanish what time he had had his first alcoholic drink that night. He answered in English, 1140, and I clarified PM.

I asked in Spanish what time he had his last drink and he answered in Spanish, "Doce y media" (1230).

In Spanish I asked what kind of drinks, and he said in English, "Four small Coronas." I clarified if he meant "Coronitas" and he said in English "Yes."

When asked in Spanish if he had consumed any alcoholic beverages in the last hour, Arrellano stated in Spanish, "No, I was working."

Even though I told Arrellano to stand with his feet together and keep his hands at his side, he kept rubbing his wrists together, complaining about the discomfort caused by the handcuffs, and the cold night air.

#### **One Legged Stand**

After demonstrating and explaining the test, in English and Spanish, Arrellano began the test, and lifted his right leg before setting it down right away. He began again and counted to ten. It appeared he might not have understood that he should count to 30, and after Sgt. Lara explained the test again, Arrellano raised his right leg, and raced through the count to 30, in 9 seconds.

#### **Walk and Turn**

Swaying during instructions, and then steps 2, 4, 7, 9, not heel to toe and difficulty with balance. On nine, just stood there, as if he was finished. I asked him to continue (in Spanish) and he didn't know what to do, so I told him in Spanish to turn and walk back 9 steps. He turned, with some balance difficulty, and then

Reporting Officer K. Lewak	ID # 5051	Division T-DUI	Approved Sgt. [Signature] 10-2839	Date of Report 11/18/2008	Time 22 34
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0111004

Page 5 of 6	Case Number		
Code Section And Description (one incident only) 23153 VC / DRIVING UNDER THE INFLUENCE W/	Date 11/18/2005	Day of Week SAT	Time 02 36
Location Of Incident (Or Address) 2300 COMMONWEALTH AV	City	District	Beat
Person(s) Involved Victim			
Suspect (If Named) ARRELLANO, LEONEL			
Property Tag No (s) B06-4983			

walked back without counting out loud. He again had to lean to the right and left and pause in his walk to maintain his balance

#### Alphabet

I asked Arrellano if he knew the Spanish alphabet. He told me he did, and so after I demonstrated the test, he parroted my example "A B C D E F Z"

When asked again if he could recite the alphabet, it appeared Arrellano was embarrassed that he did not know the alphabet. I told him it was ok not to know it, and I would not ask him to say it. He admitted to not knowing the alphabet.

#### Count

Explained and demonstrated in Spanish Arrellano said he could count and did so in Spanish "74 73 72 71 70 69 68 67 66 65 64 63 62 40 39 38 37 36 35 33 35 30 31 30 29." I told Arrellano to stop counting

#### Stand

When he closed his eyes, Arrellano started leaning forward, leaning so far forward that he looked like he was defying gravity. He maintained this position for 28 seconds

Asking Arrellano if he felt he was okay to drive, he said, "Yes"

I arrested Arrellano for 23153 VC, DUI causing Injuries, 12500(a) VC, Driving without a License, and 20001 VC, Hit and Run with Injuries

#### MIRANDA ADMONISHMENT:

At 0236 hours Sgt. Lara (ID No 5591) advised Arrellano of his rights (in Spanish), to which he responded "Si" and "Si"

#### INVESTIGATION CONTINUED:

I handcuffed Arrellano and placed him in my patrol car as he told me he would take blood test. I drove him to Police Headquarters where I allowed him to use the bathroom, as I feared he would urinate on himself. After that a blood sample was collected by [REDACTED] at 0300 hours. I impounded the blood phials on tag B06-4983 at Room 138

I placed Arrellano back in my patrol car where he remained as Det D Wall (ID No 3602) re-interviewed him

Border Patrol responded and placed an Immigration Hold on Arrellano, as he had previously stated he was in the United States of America illegally

Reporting Officer K Lewak	ID # 5061	Division T-DUI	Approved By <i>ST. MCGEE</i> <i>10-29-05</i>	Date of Report 11/18/2005	Time 22 34
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060005

Page 6 of 6	Case Number		
Code Section And Description (one incident only) 23153 / VC / DRIVING UNDER THE INFLUENCE W/	Date 11/18/2006	Day of Week SAT	Time 02:34
Location Of Incident (Or Address) 2300 COMMONWEALTH AV	City	District	Beat
Person(s) Involved Victim			
Suspect (If Named) ARRELLANO, LEONEL			
Property Tag No (s) B06-4983			

After completing the remaining paperwork needed for booking, I prepared to transport Arrellano to jail. He asked to be allowed to urinate again. After he used the bathroom I transported Arrellano to jail, where he was booked without incident.

At no time during my conversations with Arrellano did he inquire about the welfare of the other driver. He spent more time worrying about the fate of his pickup after learning it was being impounded.

## STATEMENTS

### Statement of Leonel Arrellano

I asked Arrellano to tell me about the collision. He proceeded to explain, in Spanish, that he stopped at the stop sign, and didn't see anyone coming. His girlfriend was calling him on his phone. He added that he was going to report the accident to the police and was going to go back to the scene, but he couldn't as he had to pick-up his girlfriend.

What was the color of the vehicle he struck, I asked him. Arrellano told me it was white.

I asked how fast he thought he was going at the time of the collision. Arrellano said, again in Spanish, that the area is a 25 mph zone, and he had been stopped. "I stopped, and then I moved from the stop sign, and 'boom'"-in Spanish.

I asked in Spanish, how fast, in miles an hour, more or less, he thought he had been going. Answering in Spanish, he said, "I wasn't even going miles."

### Statement of [REDACTED]

[REDACTED] told me she had heard a collision, and looked out her window to see two vehicles, a sedan and a pickup. The pickup, she told me, began to back up. [REDACTED] explained she ran downstairs and went outside in time to see the white pickup drive south on Commonwealth Avenue. She added that Commonwealth Avenue is a dead-end street. After a few moments she said the white pick-up truck began backing (north) up Commonwealth Avenue. Seeing the license plate she provided its information to dispatchers.

I asked her to describe the driver. She said he appeared to be a Hispanic male wearing a light colored shirt, in his early 20's, with short hair or a shaved head. She added he appeared to be of short stature, and was driving a white Ford F150. She yelled at the driver, but he did not stop.

## RELATED REPORTS:

Collision Investigation, copy attached

Vehicle Impound, copy attached

Written Statement of Sgt A Massey, copy attached

DMV DS-367, copy attached

Reporting Officer K Lewak	ID # 5061	Division T-DUI	Approved By <i>[Signature]</i>	Date of Report 11/18/2006	Time 22:34
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## LOCATION OF INCIDENT (OR ADDRESS)

CITY			BEAT	DISTRICT					
VICTIM'S NAME (LAST FIRST MIDDLE / OR ORGANIZATION)									
W	DC	RR	CITY		STATE ZIP				
W TYPE RESIDENCE ADDRESS			CITY						
06			CITY						
RESIDENCE PHONE	RACE	SEX	DATE OF BIRTH	ID TYPE	ID NUMBER				
	W	F							
INTERPRETER REQUIRED			RELATION TO VICTIM / SUSPECT						
STATUS	EMPLOYER (RANK IF MILITARY)			BUSINESS PHONE	DAYS OFF	WORK HRS	V/W ASSIST		
CITY						STATE ZIP			
BUSINESS OR MILITARY ADDRESS						CITY			
ADDITIONAL INFORMATION (VICTIM VEHICLE INFO IF APPLICABLE)						STATE ZIP			
VICTIM'S NAME (LAST FIRST MIDDLE / OR ORGANIZATION)						STATE ZIP			
W TYPE RESIDENCE ADDRESS			CITY			STATE ZIP			
RESIDENCE PHONE	RACE	SEX	DATE OF BIRTH	ID TYPE	ID NUMBER	INTERPRETER REQUIRED			
V		M				RELATION TO VICTIM / SUSPECT			
STATUS			EMPLOYER (RANK IF MILITARY)			BUSINESS PHONE	DAYS OFF	WORK HRS	V/W ASSIST
CITY						STATE ZIP			
BUSINESS OR MILITARY ADDRESS						CITY			
ADDITIONAL INFORMATION (VICTIM VEHICLE INFO IF APPLICABLE)						STATE ZIP			
VICTIM'S NAME (LAST FIRST MIDDLE / OR ORGANIZATION)						STATE ZIP			
W TYPE RESIDENCE ADDRESS			CITY			STATE ZIP			
RESIDENCE PHONE	RACE	SEX	DATE OF BIRTH	ID TYPE	ID NUMBER	INTERPRETER REQUIRED			
						RELATION TO VICTIM / SUSPECT			
STATUS			EMPLOYER (RANK IF MILITARY)			BUSINESS PHONE	DAYS OFF	WORK HRS	V/W ASSIST
CITY						STATE ZIP			
BUSINESS OR MILITARY ADDRESS						CITY			
ADDITIONAL INFORMATION (VICTIM VEHICLE INFO IF APPLICABLE)						STATE ZIP			
VICTIM'S NAME (LAST FIRST MIDDLE / OR ORGANIZATION)			CITY			STATE ZIP			
W TYPE RESIDENCE ADDRESS			CITY			STATE ZIP			
RESIDENCE PHONE	RACE	SEX	DATE OF BIRTH	ID TYPE	ID NUMBER	INTERPRETER REQUIRED			
						RELATION TO VICTIM / SUSPECT			
STATUS			EMPLOYER (RANK IF MILITARY)			BUSINESS PHONE	DAYS OFF	WORK HRS	V/W ASSIST
CITY						STATE ZIP			
ADDITIONAL INFORMATION (VICTIM VEHICLE INFO IF APPLICABLE)						STATE ZIP			
REPORTING OFFICER			ID				CONTINUED		
K. Lewak			5061				Y		

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## Officer's Report Narrative

Page 1 of 2	Case Number		
Code Section And Description (one incident only) VC / 23152A / DUI ALCOHOL AND/OR DRUGS	Date 11/18/2006	Day of Week SAT	Time 01:05
Location Of Incident (Or Address) 3500 Juniper	City SAN DIEGO	District	Beat 625
Person(s) Involved Victim Arellano, Leonard			
Suspect (If Named) Property Tag No (s)			

At approximately 0106 I monitored a broadcast of a serious hit and run accident at 3500 Juniper Street. A witness at the scene advised that the driver of a white Ford pickup truck, California license plate 7X43895 had fled the scene. The driver was described as a Hispanic male with short hair. The vehicle came back registered to 4128 Wabash, to a Arellano, Leonard. I was checking the area to the rear of 4128 Wabash and sighted a White Ford Pickup truck, with a matching license plate as described by the witness.

I saw a Hispanic male matching the described suspect information, standing outside the driver door of the suspect vehicle. I was requested a cover unit to the scene. Unit 655z2 arrived on scene to cover me as I was detaining the suspect for further investigation.

The suspect I detained was Arellano, Leonard. Arellano was released to Traffic units that arrived at my location.

See additional reports submitted by traffic investigators for additional information.

Reporting Officer A MASSEY	ID # 1596	Division WC	Approved 10-2934	Date of Report 11/18/2006	Time 04:10
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## **EXHIBIT 2**

1 Christopher E. Angelo [70007]  
 2 Joseph Di Monda [184640]  
 3 ANGELO & DI MONDA, LLP  
 4 1721 N. Sepulveda Blvd.  
 5 Manhattan Beach, California 90266-5014  
 Telephone: 310-939-0099  
 Fax: 310-939-0023

San Diego County, CA

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Attorneys for Plaintiff, Bun Bun Tran

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF SAN DIEGO

BUN BUN TRAN, an individual, by and  
 through his Guardian ad Litem, Le Thi  
 Nguyen,

Plaintiff,

v.

LEONEL ARRELLANO, an individual;  
 BRINKER INTERNATIONAL, INC. dba  
 CHILI'S RESTAURANT INC., a Delaware  
 corporation; PATRICIA L. COLE, an  
 individual; CITY OF SAN DIEGO, a  
 governmental entity; and DOES 1 through 50,  
 inclusive,

Defendants.

CASE NO. 37-2007-00065432-CU-PA-CTL

Dept.:

Judge:

**COMPLAINT FOR:**

1. NEGLIGENCE
2. NEGLIGENCE PER SE
3. DANGEROUS CONDITION  
OF PUBLIC PROPERTY;  
[GOV. CODE §§ 835 AND 840.2]
4. FAILURE TO PROVIDE  
TRAFFIC SAFETY DEVICE  
[GOV. CODE § 830.8]

**DEMAND FOR JURY TRIAL**

Action Filed:

Plaintiff Bun Bun Tran, by and through his guardian ad litem, Le Thi Nguyen, alleges and  
 complains as follows:

**INTRODUCTION**

1. At all times relevant herein, Plaintiff Bun Bun Tran, was and is an individual residing in  
 the State of California, County of San Diego.

1 2. At all times relevant herein, defendant Leonel Arrellano, was and is an individual residing  
2 in the State of California, County of San Diego.

3 3. At all times relevant herein, defendant Brinker International, Inc., dba Chili's  
4 Restaurant Inc., was and is a Delaware corporation doing business in California, County  
5 of San Diego.

6 4. At all times relevant herein, defendant Patricia L. Cole, was and is an individual residing  
7 in the State of California, County of San Diego.

8 5. At all times relevant herein, defendant, City of San Diego, was and is a municipal  
9 corporation, duly organized and existing under the laws of the State of California and  
10 situated in the County of San Diego.

11 6. The true names and capacities of defendants named herein as DOES 1 through 100,  
12 inclusive, are individual, corporate, associate or otherwise, and are unknown to plaintiff  
13 and are believed to be responsible in some way for plaintiff's loss and/or damages. Each  
14 of these defendants are, and at all times herein mentioned were, a partner, agent,  
15 principal, joint venturer, co-conspirator and/or are otherwise vicariously or directly  
16 responsible for the acts or omissions of the remaining defendants or themselves and are  
17 sued herein individually and are joined as party defendants in this action. Plaintiff  
18 therefore sues such defendants by such fictitious names pursuant to Section 474 of the  
19 California Code of Civil Procedure. Plaintiff is informed and believes that the DOE  
20 defendants are all California residents. Plaintiff will amend this complaint to show such  
21 true names and capacities of DOE defendants when they have been ascertained.

22 7. All of the acts and conduct described herein below of each and every defendant was  
23 performed knowingly and intentionally. In addition thereto, said defendants and  
24 employees, respectively and collectively, participated in, accepted, and ratified, the  
25 aforementioned acts and conduct of each other, and accepted the benefits of, condoned,  
26 lauded, acquiesced, authorized and otherwise approved of each and all of the said acts  
27 and conduct of the aforementioned defendants, corporate employees, agents and  
28 representatives.

1 8. On November 18, 2006, at 1:05 a.m., plaintiff Bun Bun Tran was driving his automobile  
2 eastbound on Juniper Street in the City of San Diego. There was no stop sign or any  
3 other traffic control device for said eastbound Juniper Street traffic at the intersection of  
4 Commonwealth and Juniper Street.

5 9. Eastbound plaintiff Bun Bun "Roy" Tran was prevented from seeing any southbound  
6 Commonwealth Avenue traffic at any point north of the intersection of Juniper Street and  
7 Commonwealth Avenue before entering said intersection due to the existence of foliage  
8 higher than 3 feet. This foliage started from the Northwest corner of Juniper and  
9 Commonwealth and continued uninterrupted northbound along the western edge of  
10 Commonwealth.

11 10. At the same time, defendant Leonel Arrellano, was driving his pickup truck southbound  
12 on Commonwealth Avenue in the City of San Diego.

13 11. Commonwealth Avenue and Juniper Street intersect and traffic on Commonwealth  
14 Avenue is controlled by a stop sign which gives Juniper Street traffic the right-of-way.

15 12. At 1:05 a.m., on November 18, 2006, Leonel Arrellano failed to stop for the stop sign on  
16 Commonwealth and collided with Bun Bun Tran's automobile on Juniper Street.

17 13. Bun Bun Tran's automobile was pushed across Juniper Street and came to rest on the  
18 southeast corner of the intersection of Commonwealth and Juniper.

19 14. Mr. Tran suffered severe and permanent injuries, including head trauma, subarachnoid  
20 hemorrhage, loss of consciousness, coma, ruptured spleen and severe and permanent  
21 brain injuries.

22 15. Defendant Leonel Arrellano fled the accident scene and was arrested by the City of San  
23 Diego Police Department at his home at 4128 Wabash Avenue. Mr. Arrellano was  
24 arrested for driving under the influence of alcohol, driving without a license and hit and  
25 run.

26 16. Mr. Arrellano is a Mexican national and in the United States illegally.

27 17. Mr. Arrellano was questioned by the City of San Diego Police Department in Spanish.

28

1 18. Mr. Arrellano told the police that he had been drinking while working and socializing as a  
2 cook at Chili's Restaurant in the late previous evening and had continued drinking until  
3 12:30 a.m. on November 18, 2006.

4 19. At all times relevant to this Complaint, Mr. Arrellano was an employee of Chili's  
5 Restaurant located at 4252 Camino del Rio North, San Diego, CA 92108 and had been  
6 drinking at Chili's, including after business hours, immediately prior to the accident.

7 20. Mr. Tran was taken from the accident scene and transported to UCSD Hospital by San  
8 Diego Paramedics. He remains comatose with a positive brain MRI for bleeding.

9 **FIRST CAUSE OF ACTION**

10 (Negligence Against LEONEL ARRELLANO, BRINKER INTERNATIONAL, INC., dba  
CHILI'S RESTAURANT, INC., PATRICIA L. COLE, and DOES 1 through 15 inclusive)

11 21. Plaintiff realleges and incorporates herein by this reference the allegations contained in  
12 Paragraphs 1 through 20, inclusive, as though fully set forth.

13 22. Defendant Patricia L. Cole ("Cole") is the owner of a residence commonly known as  
14 3496 Juniper Street and located at the northwest corner of Commonwealth Avenue and  
15 Juniper Street. Said corner is the location of the Commonwealth Avenue Stop Sign  
16 which controlled southbound Commonwealth traffic at Juniper.

17 23. Defendant Chili's Restaurant Inc., was and at all times relevant hereto, the employer of  
18 defendant Leonel Arrellano.

19 24. The City of San Diego ("the City") restricts all corner property throughout the City from  
20 having any fences or planting material taller than 3 feet within 25 feet of an intersection.  
21 City of San Diego Municipal Code §§ 113.0273, 113.0103 and 142.0310. The purpose of  
22 said ordinances is to protect the class of drivers, including plaintiff and defendant, by  
23 providing visibility of vehicles approaching intersections and by ensuring that traffic  
24 control devices are not obscured by foliage.

25 25. The City also has an ordinance which restricts trees from being within 20 feet of a stop  
26 sign. City of San Diego Municipal Code § 142.0409. The purpose of said ordinances is  
27 to protect the class of drivers, including plaintiff and defendant, by providing visibility of  
28

1        vehicles approaching intersections and by ensuring that traffic control devices are not  
2        obscured by foliage.

3        26. Defendant Cole's property has fencing and foliage along Juniper Street and  
4        Commonwealth Avenue which is approximately 6 feet tall and runs continuously along  
5        her property lines on both Commonwealth Avenue and Juniper Street, directly to the  
6        intersection, all in violation of the City's visibility ordinances as codified in City of San  
7        Diego Municipal Code §§ 113.0273, 113.0103 and 142.0310.

8        27. Defendant Cole's property is also adjacent to a City right-of-way in which Cole permitted  
9        foliage to grow 12 feet high and to within zero feet of the stop sign at the intersection of  
10       Commonwealth and Juniper, so as to provide Cole with privacy, all in violation of City of  
11       San Diego Municipal Code § 142.0409, and to obscure the stop sign at Commonwealth  
12       Avenue and Juniper Street.

13       28. Because of Cole's violation of the City's Municipal Code, which allowed the intersection  
14       and City Municipal Code mandated visibility area to be obscured, Mr. Tran, while driving  
15       eastbound on Juniper Street, was unable to see across Cole's property to ascertain if there  
16       was any oncoming traffic approaching the intersection at a speed which would put  
17       Mr. Tran on notice that said oncoming traffic may not stop at the intersection and yield  
18       the right-of-way to Mr. Tran.

19       29. Because of Cole's failure and the City's failure to obey the City's visibility ordinance,  
20       defendant Arrellano was unable to see the stop sign at the intersection of Commonwealth  
21       and Juniper because it was obscured by foliage in violation of City ordinances.

22       30. Defendant Cole was negligent in that she knew, or with the exercise of reasonable care  
23       should have known that by violating the City's Municipal Code, as alleged herein, and  
24       causing the intersection and stop sign to become obscured by fencing and foliage, that it  
25       was reasonably foreseeable that vehicles approaching the intersection would not be able  
26       to see each other and it was reasonably foreseeable that an automobile collision would  
27       occur at said intersection.

1 31. Defendant Chili's Restaurant Inc., ("Chili's") had a legal obligation, pursuant to federal  
2 law, to ascertain the immigration status of Leonel Arrellano. Chili's failed to ascertain  
3 Mr. Arrellano's immigration status.

4 32. On the evening of November 17, 2006, and the early morning hours of November 18,  
5 2006, and at all times relevant to this Complaint, Chili's also permitted Mr. Arrellano as a  
6 cook to consume alcoholic beverages, without purchasing them, on its premises, before  
7 and after business hours, to become intoxicated, and to drive his pickup truck home.

8 33. Chili's was negligent in that it knew, or with the exercise of reasonable care should have  
9 known, that Mr. Arrellano, and other cooks at Chili's Restaurant, were illegal aliens, and  
10 that Mr. Arrellano's driver's license was counterfeit and that it was reasonably  
11 foreseeable that if Chili's permitted him to drink on its premises after closing hours, that  
12 he would become intoxicated and that he would get involved in a motor vehicle accident.

13 34. Defendant Arrellano had a duty to operate his motor vehicle in a manner so as not to  
14 cause harm to third parties.

15 35. Defendant Arrellano had a duty to obey all Vehicle Codes during the operation of his  
16 pickup truck, including stopping at all stop signs and yielding the right-of-way to  
17 oncoming traffic.

18 36. Defendant Arrellano negligently drove his pickup truck by negligently failing to stop at  
19 the stop sign on the corner of Commonwealth Avenue and Juniper Street, in violation of  
20 the State Vehicle Code..

21 37. Defendant Arrellano was negligent in that he knew, or with the exercise of reasonable  
22 care should have known that if he drove while intoxicated, failed to obey traffic laws,  
23 including failing to stop at intersections controlled by stop signs, that it was reasonably  
24 foreseeable that he would collide with another vehicle and cause physical injuries to third  
25 parties such as plaintiff.

26 38. As a direct and legal cause of defendants' negligence, as alleged above, defendant  
27 Arrellano drove while intoxicated, was driving southbound on Commonwealth Avenue at  
28 1:05 a.m. on November 18, 2006, his view of the stop sign was obscured by illegally

1 maintained foliage at the corner of Commonwealth and Juniper, and as a result he  
 2 collided with Mr. Tran's vehicle driving eastbound on Juniper Street.

3 39. As a further direct and legal cause of defendants' negligence, as alleged above, Mr. Tran  
 4 suffered catastrophic and permanent injuries to his body, including but not limited to head  
 5 trauma, subarachnoid hemorrhage, loss of consciousness, coma, ruptured spleen and  
 6 severe and permanent brain injuries.

7 40. As a further direct and proximate result of defendant's negligence, Mr. Tran was hurt and  
 8 injured in his health, strength, and activity, sustaining permanent and life threatening  
 9 injury to his brain and person all of which injuries have caused and continue to cause Mr.  
 10 Tran great mental, physical, and nervous pain and suffering.

11 41. As a further direct and proximate result of defendant's negligence, Mr. Tran has incurred,  
 12 and will continue to incur medical and other economic expenses in an amount according  
 13 to proof at trial.

14 42. As a further direct and proximate result of defendant's negligence, Mr. Tran's earning  
 15 capacity has been greatly impaired, both in the past and in the present in an amount  
 16 according to proof at trial.

17 **SECOND CAUSE OF ACTION**

18 (Negligence Per Se Against LEONEL ARRELLANO, PATRICIA L. COLE, and DOES 1  
 19 through 15 inclusive)

20 43. Plaintiff realleges and incorporates herein by this reference the allegations contained in  
 21 Paragraphs 1 through 42, inclusive, as though fully set forth.

22 44. Defendant Cole is the owner of a residence commonly known as 3496 Juniper Street and  
 23 located at the northwest corner of Commonwealth Avenue and Juniper Street. Said  
 24 corner is the location of the Commonwealth Avenue Stop Sign which controlled the  
 25 intersection of Commonwealth and Juniper.

26 45. The City restricts all corner property throughout the City from having any fences or  
 27 planting material taller than 3 feet within 25 feet of an intersection. City of San Diego  
 28 Municipal Code §§ 113.0273, 113.0103 and 142.0310. The purpose of said ordinances is

1 to protect the class of drivers, including plaintiff and defendant, by providing visibility of  
2 vehicles approaching intersections and by ensuring that traffic control devices are not  
3 obscured by foliage.

4 46. The purpose of the fence and plant height restriction, as alleged above, on corner lots is to  
5 maintain adequate visibility on private property and in the public right-of-way. City of  
6 San Diego Municipal Code § 142.0301. The purpose of said ordinances is to protect the  
7 class of drivers, including plaintiff and defendant, by providing visibility of vehicles  
8 approaching intersections and by ensuring that traffic control devices are not obscured by  
9 foliage.

10 47. Plant material in the City right-of-way, located within the visibility area, as defined by  
11 City of San Diego Municipal Code § 113.0103, shall not exceed 24 inches in height as  
12 measured from the top of the adjacent curb. City of San Diego Municipal Code §  
13 142.0409(b)(2). The purpose of said ordinances is to protect the class of drivers,  
14 including plaintiff and defendant, by providing visibility of vehicles approaching  
15 intersections and by ensuring that traffic control devices are not obscured by foliage.

16 48. The City has a visibility area which all corner property owners must obey, as defined in  
17 City of San Diego Municipal Code § 113.0103. Measurement of the City's visibility area  
18 is codified in the City's Municipal Code, § 113.0273, as graphically indicated in the  
19 City's Municipal Code, § 113.0273, diagram 113-02RR.

20 49. The City also has an ordinance which restricts trees from being within 20 feet of a stop  
21 sign. City of San Diego Municipal Code § 142.0409. The purpose of said ordinances is  
22 to protect the class of drivers, including plaintiff and defendant, by providing visibility of  
23 vehicles approaching intersections and by ensuring that traffic control devices are not  
24 obscured by foliage.

25 50. At all times relevant to this Complaint, Defendant Cole's property was in violation of  
26 said City ordinances, as alleged herein, in that it had fencing and foliage along Juniper  
27 Street and Commonwealth Avenue approximately 6 feet tall and running continuously  
28 along the property lines on both Commonwealth Avenue and Juniper Street, directly to

1 the intersection, all in violation of the City's visibility ordinances as codified in City of  
2 San Diego Municipal Code §§ 113.0273, diagram 113-02RR, 113.0103, 142.0301,  
3 142.0310 and 142.0409(b)(2).

4 51. Defendant Cole's property is also adjacent to a City right-of-way in which the City and  
5 Cole permitted foliage to grow 12 feet high and to within zero feet of the stop sign at the  
6 intersection of Commonwealth and Juniper, so as to provide Cole with privacy, all in  
7 violation of City of San Diego Municipal Code § 142.0409.

8 52. Said City Municipal Codes, as alleged herein, are to allow adequate sight distances for  
9 safe vehicle and pedestrian movement at intersections involving a public right-of-way.  
10 City of San Diego Municipal Code §§ 113.0103 and 142.0409(b)(2). Included within the  
11 class of protected persons are plaintiff Tran and defendant Arrellano.

12 53. Because of Cole's violation of the City's Municipal Code, as alleged herein, which  
13 allowed the Municipal Code mandated visibility area and stop sign to be obscured, Mr.  
14 Tran, while driving eastbound on Juniper Street, was unable to see across Cole's property  
15 to ascertain if there was any oncoming traffic approaching the intersection at a speed  
16 which would put Mr. Tran on notice that said oncoming traffic may not stop at the  
17 intersection and yield the right-of-way to Mr. Tran.

18 54. Because of Cole's failure to obey the City's visibility ordinance, defendant Arrellano was  
19 unable to see the stop sign at the intersection of Commonwealth and Juniper because it  
20 was obscured by foliage in violation of City ordinances. Defendant Arrellano was also  
21 not able to see Mr. Tran's automobile approaching the intersection.

22 55. Defendant Cole was negligent in that she knew, or with the exercise of reasonable care  
23 should have known that by violating the City's Municipal Code, as alleged herein, and  
24 causing the intersection to become obscured by fencing and foliage, that it was reasonably  
25 foreseeable that vehicles approaching the intersection would not be able to see each other  
26 and it was reasonably foreseeable that an automobile collision would occur at said  
27 intersection.

28

1 56. Defendant Arrellano had a duty to operate his motor vehicle in a manner so as not to  
2 cause harm to third parties.

3 57. Defendant Arrellano had a duty to obey all Vehicle Codes, including Vehicle Code §§  
4 22450(a), 23153(a) and 22350 during the operation of his pickup truck, including  
5 stopping at all stop signs, and yielding the right-of-way to oncoming traffic.

6 58. Defendant Arrellano negligently failed to stop at the stop sign on the corner of  
7 Commonwealth Avenue and Juniper Street in violation of the State Vehicle Code.

8 59. Defendant Arrellano was negligent in that he knew, or with the exercise of reasonable  
9 care should have known that if he failed to stop at intersections controlled by stop signs it  
10 was reasonably foreseeable that he would collide with another vehicle and cause physical  
11 injuries to third parties such as plaintiff.

12 60. Mr. Tran, an operator of a motor vehicle on City streets was in the class of persons said  
13 City ordinances and State Vehicle Codes, as alleged herein, were meant to protect.

14 61. The injuries suffered by Mr. Tran are those which said ordinances, as alleged above, were  
15 enacted to protect the public from.

16 62. As a direct and legal cause of defendants' negligence, as alleged above, defendant  
17 Arrellano drove while intoxicated, was driving southbound on Commonwealth Avenue at  
18 1:05 a.m. on November 18, 2006, his view of the stop sign was obscured by foliage at the  
19 corner of Commonwealth and Juniper, and he collided with Mr. Tran's vehicle driving  
20 eastbound on Juniper Street.

21 63. As a further direct and legal cause of defendants' negligence, as alleged above, Mr. Tran  
22 suffered catastrophic and permanent injuries to his body, including but not limited to head  
23 trauma, subarachnoid hemorrhage, loss of consciousness, coma, ruptured spleen and  
24 severe and permanent brain injuries.

25 64. As a further direct and proximate result of defendant's negligence, Mr. Tran was hurt and  
26 injured in his health, strength, and activity, sustaining permanent and life threatening  
27 injury to his brain and person all of which injuries have caused and continue to cause Mr.  
28 Tran great mental, physical, and nervous pain and suffering.

1 65. As a further direct and proximate result of defendant's negligence, Mr. Tran has incurred,  
 2 and will continue to incur medical and other economic expenses in an amount according  
 3 to proof at trial.

4 66. As a further direct and proximate result of defendant's negligence, Mr. Tran's earning  
 5 capacity has been greatly impaired, both in the past and in the present in an amount  
 6 according to proof at trial.

7 **THIRD CAUSE OF ACTION**

8 (Dangerous Condition of Public Property, [Government Code §§ 835 and 840.2], Against City of  
 San Diego and DOES 16 Through 50 inclusive)

9 67. Plaintiff realleges and incorporates herein by this reference the allegations contained in  
 10 Paragraphs 1 through 66, inclusive, as though fully set forth.

11 68. On November 18, 2006, at 1:05 a.m., plaintiff was lawfully driving his automobile  
 12 eastbound on Juniper Street in the City of San Diego.

13 69. The City of San Diego owns and controls a right-of-way along Commonwealth Avenue at  
 14 the intersection of Juniper Street.

15 70. The City of San Diego is responsible for, and has a duty to maintain its right-of-way,  
 16 including trimming of all foliage in the right of way which may obscure any traffic  
 17 control devices, such as stop signs, or which may obscure the visibility area as defined by  
 18 the City of San Diego Municipal Code, §§ 113.0273, diagram 113-02RR, 113.0103,  
 19 142.0301, 142.0310 and 142.0409(b)(2), so as to not create a dangerous condition of said  
 20 property to any person lawfully using City property, such as City streets for private  
 21 vehicular traffic.

22 71. The City of San Diego's right-of-way along Commonwealth Avenue, at the intersection  
 23 of Juniper Street, was in a dangerous condition at the time of the accident, in that the  
 24 City, in violation of its own Municipal Code, as alleged herein above, permitted foliage to  
 25 grow 12 feet high and to within zero feet of the stop sign at the intersection of  
 26 Commonwealth and Juniper, so as to obscure the stop sign at Commonwealth and  
 27 Juniper, all in violation of City of San Diego Municipal Code § 142.0409 and Table 142-  
 28 04E.

1 72. The City of San Diego's right-of-way along Commonwealth Avenue, at the intersection  
2 of Juniper Street, was in a dangerous condition at the time of the accident, in that the  
3 City, in violation of its own Municipal Code, as alleged herein above, permitted the  
4 visibility area across the adjacent corner property own by defendant Cole, to be obscured,  
5 all in violation of the City's Municipal Code §§ 113.0273, diagram 113-02RR, 113.0103,  
6 142.0301, 142.0310 and 142.0409(b)(2).

7 73. The purpose of said City of San Diego ordinances, as alleged herein above, is to provide  
8 visibility across corner properties for the safety of pedestrians and motor vehicles and to  
9 prevent the type of accident which occurred by the City's failure to ensure its own right-  
10 of-way was not in violation of its Municipal Code and not creating a dangerous condition.

11 74. The City of San Diego Street Division is responsible for maintaining all foliage in City  
12 right-of-ways in such a manner so as to not result in a dangerous condition of property  
13 wherein the visibility area or a traffic control signal is obscured.

14 75. The employees of the City of San Diego Street Division are responsible for maintaining  
15 all foliage in City right-of-ways in such a manner so as to not result in a dangerous  
16 condition of property wherein the visibility area or a traffic control signal is obscured.

17 76. The City of San Diego is responsible for enforcing its Municipal Code, as alleged herein  
18 above, and to see to it that all corner property within the City, including the property  
19 owned by defendant Cole, is not in violation of City of San Diego ordinances as alleged  
20 herein, so as to constitute a dangerous condition of City roadways, including  
21 Commonwealth Avenue and Juniper Street.

22 77. The City of San Diego is responsible to warn motorists like Mr. Tran of dangerous  
23 conditions, like the obstructed eastbound and southbound visibility area caused by the  
24 foliage and the foliage obstructed stop sign for southbound Commonwealth Avenue  
25 traffic at the intersection of Juniper Street.

26 78. Because of the City's failure to maintain its right-of-way the intersection of  
27 Commonwealth Avenue and Juniper Street resulted in a dangerous condition of public  
28 property. The lack of visibility at the intersection of Commonwealth and Juniper.

1 combined with the obscured stop sign, resulted in a dangerous condition of City owned  
2 property; to wit, the intersection of Commonwealth and Juniper, which is also a City  
3 right-of-way.

4 79. The collision between defendant Arrellano's pickup truck and Mr. Tran's automobile, as  
5 alleged herein above, was proximately caused by the inability of defendant Arrellano to  
6 see the stop sign which was obscured by the foliage, which also trapped plaintiff into  
7 believing he could continue safely with his right-of-way on Juniper Street.

8 80. The collision between defendant Arrellano's pickup truck and Mr. Tran's automobile was  
9 further proximately caused by Mr. Tran's inability to see across the intersection of  
10 Commonwealth and Juniper, through the City Municipal Code defined 25 foot visibility  
11 area, so as to be able to see defendant Arrellano's pickup truck approaching the  
12 intersection at a rate of speed which would have put Mr. Tran on notice that it was  
13 reasonably foreseeable that defendant Arrellano would not stop at the intersection and  
14 that a collision was reasonably foreseeable if Mr., Tran did not stop his automobile and  
15 yield to defendant Arrellano.

16 81. The purpose of the City's visibility area, as City Municipal Code §§ 113.0273, diagram  
17 113-02RR, 113.0103, 142.0301, 142.0310 and 142.0409(b)(2) are to maintain adequate  
18 visibility on both private property and city right-of-ways to allow for adequate sight  
19 distances for safe vehicle travel at intersections involving a city right-of-way.

20 82. The dangerous condition created by the foliage in the City right-of-way, which was  
21 approximately 12 feet tall, within zero feet of the stop sign and obscuring the stop sign,  
22 combined with the City's failure to enforce its visibility ordinance against the corner  
23 property owner, created a reasonably foreseeable risk that a motor vehicle would not see  
24 the stop sign on Commonwealth Avenue and would fail to stop at the intersection, hence  
25 colliding with a vehicle on Juniper Street.

26 83. On November 18, 2006, and prior thereto, the intersection of Commonwealth Avenue and  
27 Juniper Street was in a dangerous condition, all in violation of Government Code § 835,  
28 that created a substantial risk of the type of injury herein alleged when the property was

1 use with due care in a manner that it was reasonably foreseeable that it would be used, in  
2 that the foliage and fencing on defendant Cole's adjacent private property exceed the City  
3 Municipal Code height limit of 3 feet, violated the City's visibility ordinance in that said  
4 foliage was 6 feet tall and within zero feet of the intersection thus obscuring the stop sign  
5 at the intersection of Commonwealth Avenue and Juniper Street, creating a substantial  
6 risk that motor vehicles traveling across the intersection would not be able to see each  
7 other as they approach the intersection.

8 84. The dangerous condition created by the foliage in the City right-of-way, which was  
9 approximately 12 feet tall, within zero feet of the stop sign and obscuring the stop sign,  
10 combined with the City's failure to enforce its visibility ordinance against the corner  
11 property owner, created a reasonably foreseeable risk that a driver, such as Mr. Tran,  
12 traveling on Juniper Street, would not have adequate sight distances for safe vehicle  
13 travel and would collide with a vehicle traveling across the intersection of  
14 Commonwealth Avenue and Juniper Street.

15 85. The failure of the City, and its employees in the City of San Diego, Street Division, and  
16 other City agencies charged with the responsibility to maintain City right-of-ways,  
17 including the trimming of foliage which obscured stop signs and the Municipal Code  
18 mandated visibility area, created the dangerous condition which existed at the intersection  
19 of Commonwealth Avenue and Juniper on November 18, 2006, at 1:05 a.m.

20 86. The City breached its duty of care to plaintiff in that the City was also on actual and  
21 constructive notice of the dangerous condition at Commonwealth Avenue and Juniper  
22 Street, as alleged herein above, in that City residents in the area had complained to the  
23 City about the obscured stop sign at Commonwealth Avenue and Juniper Street, and  
24 obscured visibility area, yet the City failed to take any action which would eliminate the  
25 dangerous condition created by the foliage and the obscured stop sign.

26 87. The City breached its duty of care to plaintiff by carelessly, negligently and improperly  
27 maintaining, managing, supervising and controlling City owned property, including the  
28 intersection of Commonwealth Avenue and Juniper Street as alleged herein.

1 88. The City further breached its duty of care to plaintiff in that the dangerous condition  
2 created by the 12 foot tall foliage in the City right-of-way within zero feet of the stop sign  
3 and obscuring the stop sign, combined with defendant Cole's property blocking the  
4 Municipal Code mandated visibility area, had existed, and had been permitted to exist for  
5 such a long period of time which would allow the foliage to grow to such a height, width  
6 and breadth, and was of such an obvious nature that the City, in the exercise of due care,  
7 should have discovered the condition and its dangerous character.

8 89. The City further breached its duty of care to plaintiff in that a reasonably adequate,  
9 practical, inexpensive and simple City system of inspection would have resulted in the  
10 dangerous condition, as alleged herein, to have been discovered prior to the November  
11 18, 2006, accident as alleged herein.

12 90. The City further breached its duty of care to plaintiff in that the City maintained and  
13 operated such an inspection system, but failed to operate it with due care and so  
14 negligently designed and operated such an inspection system to as to render it useless.  
15 Hence, the City failed to discover the dangerous condition which caused the November  
16 18, 2006, accident as alleged above.

17 91. On February 15, 2007, the City of San Diego was personally served with a Tort Claim, in  
18 accordance with City of San Diego requirements and with the State of California Torts  
19 Claim requirements. The City rejected said claim on April 11, 2007.

20 92. As a direct and legal cause of the dangerous condition of defendants' property, as alleged  
21 above, defendant Arrellano was driving southbound on Commonwealth Avenue at  
22 1:05 a.m. on November 18, 2006, his view of the stop sign was obscured by foliage at the  
23 corner of Commonwealth and Juniper, and he collided with Mr. Tran's vehicle driving  
24 eastbound on Juniper Street.

25 93. As a direct and legal cause of the dangerous condition of defendants' property, as alleged  
26 above, which obscured the stop sign on Commonwealth Avenue at the intersection of  
27 Juniper Street, and which allowed the intersection and City Municipal Code mandated  
28 visibility area to be obscured. Mr. Tran, while driving eastbound on Juniper Street, was

1       unable to see across Cole's property to ascertain if there was any oncoming traffic  
2       approaching the intersection at a speed which would put Mr. Tran on notice that said  
3       oncoming traffic may not stop at the intersection and yield the right-of-way to Mr. Tran.  
4       Hence, the intersection of Commonwealth Avenue and Juniper Street constituted a  
5       dangerous condition of public property.

6       94. As a further direct and legal cause of the dangerous condition of defendants' property, as  
7       alleged above, Mr. Tran's automobile was completely destroyed in the collision.

8       95. As a further direct and legal cause of the dangerous condition of defendants' property, as  
9       alleged above, Mr. Tran suffered catastrophic and permanent injuries to his body,  
10       including but not limited to head trauma, subarachnoid hemorrhage, loss of  
11       consciousness, coma, ruptured spleen and severe and permanent brain injuries.

12       96. As a further direct and proximate result of the dangerous condition of defendants'  
13       property, Mr. Tran was hurt and injured in his health, strength, and activity, sustaining  
14       permanent and life threatening injury to his brain and person all of which injuries have  
15       caused and continue to cause Mr. Tran great mental, physical, and nervous pain and  
16       suffering.

17       97. As a further direct and proximate result of the dangerous condition of defendants'  
18       property, Mr. Tran has incurred, and will continue to incur medical and other economic  
19       expenses in an amount according to proof at trial.

20       98. As a further direct and proximate result of the dangerous condition of defendants'  
21       property, Mr. Tran's earning capacity has been greatly impaired, both in the past and in  
22       the present in an amount according to proof at trial.

#### 23                   **FOURTH CAUSE OF ACTION**

24                   (Failure to Provide a Traffic Warning Device Against the City of San Diego [Gov't Code 830.8]  
25                   and DOES 16 through 50 Inclusive)

26       99. Plaintiff realleges and incorporates herein by this reference the allegations contained in  
27       Paragraphs 1 through 98, inclusive, as though fully set forth.

28       100. On November 18, 2006, at 1:05 a.m., plaintiff was lawfully driving his automobile  
29       eastbound on Juniper Street in the City of San Diego.

1 101. The City of San Diego owns and controls a right-of-way along Commonwealth Avenue at  
2 the intersection of Juniper Street.

3 102. The City of San Diego is responsible for, and has a duty to maintain its right-of-way,  
4 including trimming of all foliage in the right of way which may obscure any traffic  
5 control devices, such as stop signs, or which may obscure the visibility area as defined by  
6 the City of San Diego Municipal Code, §§ 113.0273, diagram 113-02RR, 113.0103,  
7 142.0301, 142.0310 and 142.0409(b)(2), so as to not create a dangerous condition of said  
8 property to any person lawfully using City property, such as City streets for private  
9 vehicular traffic.

10 103. The City of San Diego's right-of-way along Commonwealth Avenue, at the intersection  
11 of Juniper Street, was in a dangerous condition at the time of the accident, in that the  
12 City, in violation of its own Municipal Code, as alleged herein above, permitted foliage to  
13 grow 12 feet high and to within zero feet of the stop sign at the intersection of  
14 Commonwealth and Juniper, so as to obscure the stop sign at Commonwealth and  
15 Juniper, all in violation of City of San Diego Municipal Code § 142.0409 and Table 142-  
16 04E.

17 104. The City of San Diego's right-of-way along Commonwealth Avenue, at the intersection  
18 of Juniper Street, was in a dangerous condition at the time of the accident, in that the  
19 City, in violation of its own Municipal Code, as alleged herein above, permitted the  
20 visibility area across the adjacent corner property own by defendant Cole, to be obscured,  
21 all in violation of the City's Municipal Code §§ 113.0273, diagram 113-02RR, 113.0103,  
22 142.0301, 142.0310 and 142.0409(b)(2).

23 105. The purpose of said City of San Diego ordinances, as alleged herein above, is to provide  
24 visibility across corner properties for the safety of pedestrians and motor vehicles and to  
25 prevent the type of accident which occurred by the City's failure to ensure its own right-  
26 of-way was not in violation of its Municipal Code and not creating a dangerous condition.

27 106. The City of San Diego Street Division is responsible for maintaining all foliage in City  
28 right-of-ways in such a manner so as to comply with said City ordinances as alleged

1        herein above, and to not result in a dangerous condition of property wherein the visibility  
2        area or a traffic control signal is obscured.

3        107. The City of San Diego is responsible for enforcing its Municipal Code, as alleged herein  
4        above, and to see to it that all corner property within the City, including the property  
5        owned by defendant Cole, is not in violation of City of San Diego ordinances as alleged  
6        herein, so as to constitute a dangerous condition of City roadways, including  
7        Commonwealth Avenue and Juniper Street.

8        108. The City of San Diego is responsible to warn motorists like Mr. Tran of dangerous  
9        conditions, like the obstructed eastbound and southbound visibility area caused by the  
10       foliage and the foliage obstructed stop sign for southbound Commonwealth Avenue  
11       traffic at the intersection of Juniper Street. This includes a warning sign or stop sign for  
12       eastbound Juniper Street traffic, of which none existed, thereby constituting a concealed  
13       trap. Government Code § 830.8; Kessler v. State (1988) 206 Cal.App.3d 317, 322; Hilts  
14       v. County of Solano (1968) 265 Cal.App.2d 161; Bakity v. County of Riverside (1970)  
15       12 Cal.App.3d 24. Existing warning signs were inadequate to warn Mr. Tran. This  
16       dangerous condition could have been prevented under Government Code § 830.8 by  
17       installing an eastbound Juniper Street stop sign at Commonwealth Avenue, but  
18       negligently was not.

19       109. The City should have installed a stop sign on Juniper Street once it decided to violate its  
20       own Municipal Codes and permit the Commonwealth Avenue stop sign, at the intersection  
21       of Juniper Street, to be obscured by foliage and to permit the visibility area to be  
22       obstructed and obscured by foliage, hence allowing a dangerous condition of public  
23       property to exist

24       110. Because of the City's failure to maintain its right-of-way, and to enforce its Municipal  
25       Code on corner property, the intersection of Commonwealth Avenue and Juniper Street  
26       resulted in a dangerous condition of public property. The lack of visibility at the  
27       intersection of Commonwealth and Juniper, combined with the obscured stop sign,

1 resulted in a dangerous condition of City owned property; to wit, the intersection of  
2 Commonwealth and Juniper, which is also a City right-of-way.

3 111. The collision between defendant Arrellano's pickup truck and Mr. Tran's automobile, as  
4 alleged herein above, was proximately caused by the inability of defendant Arrellano to  
5 see the stop sign which was obscured by the foliage, which also trapped plaintiff into  
6 believing he could continue safely with his right-of-way on Juniper Street.

7 112. The collision between defendant Arrellano's pickup truck and Mr. Tran's automobile was  
8 further proximately caused by Mr. Tran's inability to see across the intersection of  
9 Commonwealth and Juniper, through the City Municipal Code defined 25 foot visibility  
10 area, so as to be able to see defendant Arrellano's pickup truck approaching the  
11 intersection at a rate of speed which would have put Mr. Tran on notice that it was  
12 reasonably foreseeable that defendant Arrellano would not stop at the intersection and  
13 that a collision was reasonably foreseeable if Mr., Tran did not stop his automobile and  
14 yield to defendant Arrellano.

15 113. The purpose of the City's visibility area, as City Municipal Code §§ 113.0273, diagram  
16 113-02RR, 113.0103, 142.0301, 142.0310 and 142.0409(b)(2) are to maintain adequate  
17 visibility on both private property and city right-of-ways to allow for adequate sight  
18 distances for safe vehicle travel at intersections involving a city right-of-way.

19 114. The dangerous condition created by the foliage in the City right-of-way, which was  
20 approximately 12 feet tall, within zero feet of the stop sign and obscuring the stop sign,  
21 combined with the City's failure to enforce its visibility ordinance against the corner  
22 property owner, created a reasonably foreseeable risk that a motor vehicle would not see  
23 the stop sign on Commonwealth Avenue and would fail to stop at the intersection, hence  
24 colliding with a vehicle on Juniper Street.

25 115. On November 18, 2006, and prior thereto, the intersection of Commonwealth Avenue and  
26 Juniper Street was in a dangerous condition, all in violation of Government Code § 835,  
27 that created a substantial risk of the type of injury herein alleged when the property was  
28 use with due care in a manner that it was reasonably foreseeable that it would be used, in

1 that the foliage and fencing on defendant Cole's adjacent private property exceed the City  
2 Municipal Code height limit of 3 feet, violated the City's visibility ordinance in that said  
3 foliage was 6 feet tall and within zero feet of the intersection thus obscuring the stop sign  
4 at the intersection of Commonwealth Avenue and Juniper Street, creating a substantial  
5 risk that motor vehicles traveling across the intersection would not be able to see each  
6 other as they approach the intersection.

7 116. The dangerous condition created by the foliage in the City right-of-way, which was  
8 approximately 12 feet tall, within zero feet of the stop sign and obscuring the stop sign,  
9 combined with the City's failure to enforce its visibility ordinance against the corner  
10 property owner, created a reasonably foreseeable risk that a driver, such as Mr. Tran,  
11 traveling on Juniper Street, would not have adequate sight distances for safe vehicle  
12 travel and would collide with a vehicle traveling across the intersection of  
13 Commonwealth Avenue and Juniper Street.

14 117. The failure of the City, and its employees in the City of San Diego, Street Division, and  
15 other City agencies charged with the responsibility to maintain City right-of-ways,  
16 including the trimming of foliage which obscured stop signs and the Municipal Code  
17 mandated visibility area, created the dangerous condition which existed at the intersection  
18 of Commonwealth Avenue and Juniper on November 18, 2006, at 1:05 a.m.

19 118. The City breached its duty of care to plaintiff in that the City was also on actual and  
20 constructive notice of the dangerous condition at Commonwealth Avenue and Juniper  
21 Street, as alleged herein above, in that City residents in the area had complained to the  
22 City about the obscured stop sign at Commonwealth Avenue and Juniper Street, and  
23 obscured visibility area, yet the City failed to take any action which would eliminate the  
24 dangerous condition created by the foliage and the obscured stop sign.

25 119. The City breached its duty of care to plaintiff by carelessly, negligently and improperly  
26 maintaining, managing, supervising and controlling City owned property, including the  
27 intersection of Commonwealth Avenue and Juniper Street as alleged herein.

28

1 120. The City further breached its duty of care to plaintiff in that the dangerous condition  
2 created by the 12 foot tall foliage in the City right-of-way within zero feet of the stop sign  
3 and obscuring the stop sign, combined with defendant Cole's property blocking the  
4 Municipal Code mandated visibility area, had existed, and had been permitted to exist for  
5 such a long period of time which would allow the foliage to grow to such a height, width  
6 and breadth, and was of such an obvious nature that the City, in the exercise of due care,  
7 should have discovered the condition and its dangerous character.

8 121. The City further breached its duty of care to plaintiff in that a reasonably adequate,  
9 practical, inexpensive and simple City system of inspection would have resulted in the  
10 dangerous condition, as alleged herein, to have been discovered prior to the November  
11 18, 2006, accident as alleged herein.

12 122. The City further breached its duty of care to plaintiff in that the City maintained and  
13 operated such an inspection system, but failed to operate it with due care and so  
14 negligently designed and operated such an inspection system to as to render it useless.  
15 Hence, the City failed to discover the dangerous condition which caused the November  
16 18, 2006, accident as alleged above.

17 123. The City further breached its duty of care to plaintiff by maintaining a concealed trap for  
18 eastbound traffic on Juniper Street at Commonwealth Avenue.

19 124. On February 15, 2007, the City of San Diego was personally served with a Tort Claim, in  
20 accordance with City of San Diego requirements and with the State of California Torts  
21 Claim requirements. The City rejected said claim on April 11, 2007.

22 125. As a direct and legal cause of the dangerous condition of defendants' property, as alleged  
23 above, defendant Arrellano was driving southbound on Commonwealth Avenue at 1:05  
24 a.m. on November 18, 2006, his view of the stop sign was obscured by foliage at the  
25 corner of Commonwealth and Juniper, and he collided with Mr. Tran's vehicle driving  
26 eastbound on Juniper Street.

27 126. As a direct and legal cause of the dangerous condition of defendants' property, as alleged  
28 above, which obscured the stop sign on Commonwealth Avenue at the intersection of

1 Juniper Street, and which allowed the intersection and City Municipal Code mandated  
2 visibility area to be obscured, Mr. Tran, while driving eastbound on Juniper Street, was  
3 unable to see across Cole's property to ascertain if there was any oncoming traffic  
4 approaching the intersection at a speed which would put Mr. Tran on notice that said  
5 oncoming traffic may not stop at the intersection and yield the right-of-way to Mr. Tran.  
6 Hence, the intersection of Commonwealth Avenue and Juniper Street constituted a  
7 dangerous condition of public property.

8 127. As a further direct and legal cause of the dangerous condition of defendants' property, as  
9 alleged above, Mr. Tran's automobile was completely destroyed in the collision.

10 128. As a further direct and legal cause of the dangerous condition of defendants' property, as  
11 alleged above, Mr. Tran suffered catastrophic and permanent injuries to his body,  
12 including but not limited to head trauma, subarachnoid hemorrhage, loss of  
13 consciousness, coma, ruptured spleen and severe and permanent brain injuries.

14 129. As a further direct and proximate result of the dangerous condition of defendants'  
15 property, Mr. Tran was hurt and injured in his health, strength, and activity, sustaining  
16 permanent and life threatening injury to his brain and person all of which injuries have  
17 caused and continue to cause Mr. Tran great mental, physical, and nervous pain and  
18 suffering.

19 130. As a further direct and proximate result of the dangerous condition of defendants'  
20 property, Mr. Tran has incurred, and will continue to incur medical and other economic  
21 expenses in an amount according to proof at trial.

22 131. As a further direct and proximate result of the dangerous condition of defendants'  
23 property, Mr. Tran's earning capacity has been greatly impaired, both in the past and in  
24 the present in an amount according to proof at trial.

25  
26 **WHEREFORE**, plaintiff demands judgment as set forth below

27 1. For general damages in a sum to be proved at trial, against all defendants on  
28 all causes of action;

- 1 2. For special damages, including all expenses for loss of present and future support in a
- 2 sum according to proof against all defendants on all causes of action;
- 3 3. For damages to real and personal property according to proof, against all defendants;
- 4 4. For costs of suit herein incurred.
- 5 5. For such other and further relief as the court may deem proper

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands trial of their claims by jury to the extent authorized by law

10 Dated: April 17, 2007

ANGELO & DI MONDA, LLP

11 By: \_\_\_\_\_

12 Christopher E. Angelo  
13 Joseph Di Monda  
14 Attorneys for Plaintiff  
Bun Bun Tran

## **EXHIBIT 3**

LAW OFFICES OF  
ANH QUOC DUY NGUYEN & ASSOCIATES

Branch Offices:

SAN GABRIEL  
1015 E. LAS TUNAS DRIVE  
SAN GABRIEL, CA 91776  
PHONE: (626) 286-2239

SAN DIEGO  
4745 EL CAJON BLVD., SUITE 101  
SAN DIEGO, CA 92126  
PHONE: (619) 284-0800

15622 BROOKHURST STREET  
WESTMINSTER, CALIFORNIA 92683

PHONE: (714) 531-8181  
FAX: (714) 531-9397

RESPOND TO:

- WESTMINSTER OFFICE
- SAN GABRIEL OFFICE
- SAN DIEGO

January 26, 2007

Tiara Foster, Claims Representative  
Progressive Insurance Company  
6131 Orangethorpe Avenue, Suite 300  
Buena Park, CA 90620  
714.736.6300 general phone  
714.736.6321 direct  
714.736.6308 fax

Via Certified Mail with Return Receipt  
and Fax to: (714)736-6308

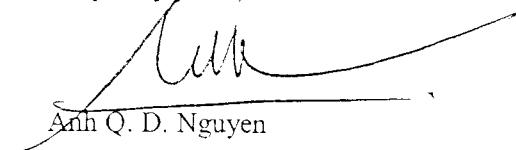
Re:	My Client:	Bun Bun Tran
	Your Insured/Defendant:	Leonel Arrellano
	Date of Accident:	November 18, 2006
	Your Claim No.:	060409287

Dear Ms. Foster:

Please be advised that I represent Bun Bun Tran, who was seriously injured because of your insured running a stop sign. Thereafter, your insured fled from the scene. He has been arrested and is currently awaiting a criminal hearing in February of this year. My client has been hospitalized at UC San Diego, Floor 8 East, Room 812A, in a comatose condition since November 18, 2006. I understand that you have learned about his condition and the facts behind this accident from Esurance, the auto insurance company of Bun Bun Tran. You therefore know that the medical expenses are approaching \$700,000 and Progressive has insufficient amounts of liability insurance.

My client is represented by his mother/guardian, Le Thi Nguyen. My client is hereby willing to be responsible for any and all medical and other liens so long as Progressive tenders all of its liability limits within 15 days from the date of this letter subject to the further condition precedent of convincing me that there are no other responsible parties, whether insured or not, causing this accident. If I am convinced, I will state as much in a letter. If I am not convinced, I will never state as much in a letter and there will be no settlement. Please also tell me, since it may bear on settlement, whether or not your insured received liquor at a Chili's restaurant shortly before the accident, and if so, which Chili's restaurant. We understand that Chili's was your insured's employer at the time of the accident.

Very truly yours,



Anh Q. D. Nguyen

060032

## **EXHIBIT 4**

**PROGRESSIVE**

Claims Office  
6311 Orangethorpe Ave. Ste 300  
Buena Park, CA 90620  
Telephone: 714-736-6300  
Facsimile: 714-736-6308

Underwritten by: **Progressive West Insurance Company**  
Claim number: 060409287  
Date of loss: 11/18/2006  
Today's date: 02/02/2007

Law Offices Of Anh Q.D. Nguyen & Assoc  
Attn: Anh Nguyen  
15622 Brookhurst Street  
Westminster, CA 92683

Your Client: Bun Bun Tran

Dear Mr. Nguyen:

This will confirm our offer of \$15000 to settle your client's claim. Please be advised that this offer represents the policy limit. For your review, we have enclosed a copy of the declaration page.

You requested information regarding our insured's relationship with Chili's Restaurant and if he was served alcohol at this location. Unfortunately, we have not been able to locate our insured; therefore, we do not have a recorded statement from our insured regarding the facts of this loss.

Please convey this offer to your client(s) and advise me of the decision at your earliest convenience.

Please feel free to call with any questions or concerns.

Sincerely,

  
Tiara R. Foster, Ext.6321  
Claims Specialist

tiara\_r\_foster@progressive.com

TXF/tf

060033

## **EXHIBIT 5**

Claims Office  
1455 Frazee Rd. Suite 200  
San Diego, CA 92108  
Telephone: 408-281-5100  
Facsimile: 408-224-5007

Underwritten by: **Progressive West Insurance Company**

Claim number: 060409287  
Date of loss: 11/18/2006  
Today's date: 03/02/2007

Law Offices Of Anh Q.D. Nguyen & Assoc  
Attn: Anh Nguyen  
15622 Brookhurst Street  
Westminster, CA 92683

Your Client: Bun Tran

We wish to acknowledge receipt of the information/documentation which you have provided in reference to the above captioned claim. In our effort to investigate and evaluate this claim, we will need additional time to make a final determination. Please note the reason(s) listed for additional time: We are waiting for a demand from the City of San Diego for their property damage.

A determination on your claim cannot be made until the following event, process, or determination is made: The City of San Diego must send their demand for property damage. We will be in contact with you to advise you of the progress of our investigation.

In the interim, if you have any questions or other information that has relevance to our consideration of your claim, please contact the undersigned.

Sincerely,

Kendra R Turner, Ext.3329  
Claims Representative

kendra\_turner@progressive.com

KRT/kt

060034

## **EXHIBIT 6**

**PROGRESSIVE**

6131 Orangeview Drive, Buena Park, CA 90620  
(714) 736-6300  
facsimile (714) 690-9730

*progressive.com*

March 15, 2007

Law Offices of Anh Q.D. Nguyen & Associates  
15622 Brookhurst Street  
Westminster, CA 92683

Attention: Anh Nguyen, Esq.

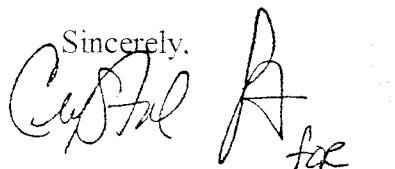
Claim Number : 060409287  
Date of Loss : November 18, 2006  
Your Client : Tran, Bun

Dear Mr. Nguyen:

We are unable to accept or deny your client's claim until we receive the following information:

1. The status regarding our offer in the amount of \$15,000 (policy limits offer) to resolve your client's pending Bodily Injury claim.

Please furnish the requested items to our office immediately. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,  


Tiara Foster  
Claims Specialist Senior  
On Behalf of Progressive West Insurance Company  
(714) 736-6321  
email: [tiara\\_r\\_foster@progressive.com](mailto:tiara_r_foster@progressive.com)

TF/clf

000035

## **EXHIBIT 7**

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		RESELLER	TELEPHONE	FOR COURT USE ONLY
ROBIE & MATTHAI 500 S. GRAND AVE., 15TH FLOOR LOS ANGELES, CA 90071		(213) 706-8000		
ATTORNEY FOR (NAME)		Ref. No. or File No.		
		00S28700-02		
Insert name of court, judicial district or branch court, if any, and post office and street address U.S. DISTRICT COURT, SOUTHERN DISTRICT 880 FRONT STREET SAN DIEGO, CA 92101				
SHORT TITLE OF CASE PROGRESSIVE vs. BUN BUN TRAN				
PROOF OF SERVICE (Summons)	DATE:	TIME:	DEPT./DIV:	CASE NUMBER: 07CV1999JAHPOR

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the (specify documents):  
SUMMONS AND COMPLAINT; CIVIL CASE COVER SHEET; ; NOTICE OF INTERESTED PARTIES
2. a. Party Served: (specify name of party as shown on the documents served):  
BUN BUN TRAN C/O LE THI NGUYEN GUARDIAN AD LITEM
  - b. Person Served: JULIA ABASTILLAS, CO-TENANT
  - c. Address: 7436 PRAIRIE MOUNT WAY  
SAN DIEGO, CA 92139  
(Residence)
3. I served the party named in item 2a
  - b. By leaving the copies with or in the presence of (name and title or relationship to the party named in item 2b)  
JULIA ABASTILLAS, CO-TENANT
    - (2) (Home) A competent member of the household (at least 18 years of age) at the dwelling house, usual place of abode or mailing address of the person served. I informed him or her of the general nature of the papers.
    - (3) on (date): November 17, 2007
    - (4) at (time): 11:54 am
    - (5) A declaration of diligence is attached. (Substituted Service on a Natural Person, Minor, Conservatee or Candidate.)
- d. By causing copies to be mailed via first-class mail, postage pre-paid. A Declaration of Mailing is attached.
4. The "Notice to the Person Served" (on the Summons) was completed as follows:
  - a. as an individual defendant (CCP 416.90)

5. Person serving (name, address, and telephone No.):
  - a. Fee for service: \$ 24.25 [CCP 1033.5(a)(4)(B)]  
INDEPENDENT CONTRACTOR, EXP 11/22/08
    - (1) Employee or Independent contractor.
    - (2) Registration No.: 479
    - (3) County: SAN DIEGO
6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/12/07



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		TELEPHONE (J.)	FOR COURT USE ONLY	
ROBIE & MATTHAI 500 S. GRAND AVE., 15TH FLOOR LOS ANGELES, CA 90071		(213) 706-8000		
ATTORNEY FOR (NAME)		REFERENCE NUMBER 00S28700-02		
Insert name of court, judicial district or branch court, if any, and post office and street address U.S. DISTRICT COURT, SOUTHERN DISTRICT 880 FRONT STREET SAN DIEGO, CA 92101				
SHORT NAME OF CASE PROGRESSIVE vs. BUN BUN TRAN				
DECLARATION OF DILIGENCE	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: 07CV1999JAHPOR

I received the within process on October 31, 2007 and that after due and diligent effort I have been able to effect service on the within named party at the following address. However, extraordinary efforts were required to effect service as described below.

Name: BUN BUN TRAN C/O LE THI NGUYEN GUARDIAN AD LITEM  
Home: 7436 PRAIRIE MOUNT WAY  
SAN DIEGO, CA 92139

As enumerated below:

11/14/07	09:13 pm	NO ANSWER AT DOOR. LIGHTS OFF INSIDE OF THE RESIDENCE. NO ANSWER AT NEIGHBORS.
11/15/07	07:48 am	NO ANSWER AT DOOR (RESIDENCE).
11/16/07	02:10 pm	NO ANSWER AT DOOR (RESIDENCE).
11/17/07	11:54 am	LE THI NGUYEN NOT HOME, AT THE HOSPITAL.
11/17/07	11:54 am	SUBSTITUTED SERVICE. RECIPIENT INSTRUCTED TO DELIVER DOCUMENTS TO NAMED DEFENDANT.

Fee for service:

JUDICIAL COUNCIL FORM, RULE #982 (A)(23)

Registered: SAN DIEGO County.  
Number: 479

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed

December 12, 2007

SAN DIEGO

at California.

ADVANCED ATTORNEY SERVICES, INC.  
3500 5th Avenue, #202, San Diego, CA 92103  
(619)299-2012

Signature:

Name: RODRIGO LORA

Title: INDEPENDENT CONTRACTOR, EXP 11/22/08

000037

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		TELEPHONE NO.	FOR COURT USE ONLY	
ROBIE & MATTHAI 500 S. GRAND AVE., 15TH FLOOR LOS ANGELES, CA 90071		(213) 706-8000		
ATTORNEY FOR (NAME)		REFERENCE NUMBER		
		00S28700-02		
Insert name of court, judicial district or branch court, if any, and post office and street address U.S. DISTRICT COURT, SOUTHERN DISTRICT 880 FRONT STREET SAN DIEGO, CA 92101				
SHORT NAME OF CASE PROGRESSIVE VS. BUN BUN TRAN				
DECLARATION OF MAILING	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: 07CV1999JAHPOR

I am a citizen of the United States and employed in the County of San Diego, California. I am over the age of 18 and not a party to this action. My business address is 3500 Fifth Avenue, #202, San Diego, CA 92103

On November 17, 2007, after substituted service under section CCP 415.20 (A) or 415.20 (B) or FRCIV.P 4(D)(1) was made, I mailed copies of the:

SUMMONS AND COMPLAINT; CIVIL CASE COVER SHEET; ; NOTICE OF INTERESTED PARTIES

to the defendant in said action by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at SAN DIEGO, California, addressed as follows:

**BUN BUN TRAN C/O LE THI NGUYEN GUARDIAN AD LITEM  
7436 PRAIRIE MOUNT WAY  
SAN DIEGO, CA 92139**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on December 12, 2007 at San Diego, California.

**Fee for service:**

JUDICIAL COUNCIL FORM, RULE #962 (A)(23)

Registered: San Diego County,  
Number: 1249

I declare under penalty of perjury that the foregoing is true and correct  
and that this declaration was executed

on: December 12, 2007  
at: San Diego, California.

**ADVANCED ATTORNEY SERVICES, INC.  
3500 5th Avenue, #202, San Diego, CA 92103  
(619)299-2012**

Signature:

Name: R. Mericle  
Title: Employee

0110038

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		TELEPHONE NO.	FOR COURT USE ONLY	
ROBIE & MATTHAI 500 S. GRAND AVE., 15TH FLOOR LOS ANGELES, CA 90071		(213) 706-8000		
ATTORNEY FOR (NAME)		REFERENCE NUMBER		
		00S28700-01		
Insert name of court, judicial district or branch court, if any, and post office and street address U.S. DISTRICT COURT, SOUTHERN DISTRICT 880 FRONT STREET SAN DIEGO, CA 92101				
SHORT NAME OF CASE PROGRESSIVE VS. BUN BUN TRAN				
NON SERVICE REPORT	DATE:	TIME:	DEPT./DIV.:	CASE NUMBER: 07CV1999JAHPOR

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

SUMMONS AND COMPLAINT; CIVIL CASE COVER SHEET; ; NOTICE OF INTERESTED PARTIES

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: BUN BUN TRAN

Home: 4576 PARK BLVD. #5  
SAN DIEGO, CA 92116

Process is being returned without service for the following reason(s):

10/31/07	09:13 pm	NO ANSWER AT DOOR (RESIDENCE) .
11/01/07	07:28 am	NO ANSWER AT DOOR (RESIDENCE) . NO ANSWER AT NEIGHBORS.
11/03/07	02:14 pm	BAD ADDRESS (RESIDENCE) AT: 4576 PARK BLVD., #5 SAN DIEGO, CA 92116. CURRENT OCCUPANTS ARE THE "HOPE" FAMILY.
11/05/07		SERVICE PUT ON HOLD. REPORT SENT TO CLIENT.
11/09/07		REMINDER: THIS SERVICE HAS BEEN ON HOLD PENDING FURTHER INSTRUCTIONS. SERVICE WILL BE RETURNED BY 11/15/07 IF NO CALLS ARE RECEIVED.
11/14/07		UNABLE TO SERVE AT GIVEN ADDRESS, NOW ATTEMPTING AT ALTERNATE ADDRESS PROVIDED 7436 PRAIRIE MOUNT WAY, SD, CA 92139, SEE LOCATION 02 .

Fee for service:

JUDICIAL COUNCIL FORM, RULE #982 (A)(23)

Registered: . . . . . SAN DIEGO . . . . . County.  
Number: . . . . . 479 . . . . .

I declare under penalty of perjury that the foregoing is true and correct  
and that this declaration was executed

on: . . . . . December 12, 2007 . . . . .  
at: . . . . . SAN DIEGO . . . . . California.

ADVANCED ATTORNEY SERVICES, INC.  
3500 5th Avenue, #202, San Diego, CA 92103  
(619)299-2012

Signature:   
Name: RODRIGO LORA  
Title: INDEPENDENT CONTRACTOR, EXP 11/22/06  
000039

## **EXHIBIT 8**

## WINET, PATRICK &amp; WEAVER

A LAW CORPORATION

440 SOUTH MELROSE DRIVE, SUITE 200  
 VISTA, CALIFORNIA 92081-6666  
 TELEPHONE (760) 758-4261  
 FACSIMILE (760) 758-6420

PALM SPRINGS OFFICE

340 SOUTH FARRELL DRIVE, SUITE A201  
 PALM SPRINGS, CALIFORNIA 92262-5932  
 TELEPHONE (760) 416-1400  
 FACSIMILE (760) 416-1405

May 7, 2008

Chris Angelo  
 Angelo & Di Monda  
 1721 N. Sepulveda Boulevard  
 Manhattan Beach, CA 90266-5014

Re: Tran v. Arrellano  
 Our File: P21084

Dear Mr. Angelo:

I am in receipt of your April 29, 2008 letter. In that letter, you attempt to memorialize certain items which are correct and incorrect. This letter will hopefully clarify those issues.

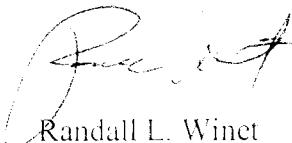
First, you are correct that our office is not representing Mr. Arrellano in the federal action. Secondly, your letter references that our office asked Progressive to pay our firm to represent Mr. Arrellano in the federal action. This statement is incorrect. Our firm never asked to represent Mr. Arrellano in the federal action. However, we did request that Progressive pay for other counsel to represent Mr. Arrellano in the federal action. Third, you are correct that in response to our request for Progressive to pay for counsel for Mr. Arrellano in the federal action, Progressive declined.

Our office remains in contact with Mr. Arrellano in prison. As stated previously, we are not at liberty to tell you what conversations we have with Mr. Arrellano, and cannot do so. For Mr. Arrellano's protection, it is good news that the Declaratory Relief action against Mr. Arrellano has been dismissed.

Since we continue to represent Mr. Arrellano in the defense of litigation filed by your client, we again must insist that any contacts made with Mr. Arrellano be performed through our office.

Sincerely,

WINET, PATRICK & WEAVER

  
 Randall L. Winet

RLW:er

0000040

## EXHIBIT 9

CHRISTOPHER E. ANGELO  
JOSEPH DI MONDA, A.L.A.

ANGELO & DI MONDA  
A LIMITED LIABILITY PARTNERSHIP  
1721 NORTH SEPULVEDA BOULEVARD  
MANHATTAN BEACH, CALIFORNIA 90266

TELEPHONE: (310) 939-0028  
FACSIMILE: (310) 939-0023

November 28, 2007

Randall L. Winet, Esq.  
Winet, Patrick & Weaver  
440 South Melrose Drive, Suite 200  
Vista, CA 92081-6666

Re: *Progressive West Insurance Company vs. Bun Bun Tran, et al.*  
Your File No. P21084

Dear Mr. Winet:

Enclosed please find a copy of Progressive Insurance Company's October 16, 2007 Complaint for Declaratory Relief filed against my client and your client, Leonel Arrellano. As you can see, Progressive has hired the defense firm of Robie & Matthai, an insurance defense firm just like yours. I told Mr. McLaughlin at yesterday's deposition of this fact, and he was totally unaware that such a lawsuit had been filed.

I then asked Mr. McLaughlin about the status of his client signing my assignment of bad faith rights to collect any over limits judgment against Progressive first, not Arrellano. Mr. McLaughlin told me that you were in complete charge of that. Hence, I am writing you this letter. Mr. McLaughlin did tell me that both of my bad faith letters have been sent to Mr. Arrellano, but Mr. McLaughlin does not know if you also sent my assignment of bad faith rights contract to Mr. Arrellano. Have you?

More importantly, you must have known that Progressive West Insurance Company was going to file this Federal action against your primary client, Mr. Arrellano, because this Progressive Federal action encloses a copy of my June 28, 2007 letter to Jim McLaughlin of your firm.

Have you found a personal attorney who speaks Spanish to communicate with your primary client, Mr. Arrellano, in an effort to respond to my bad faith assignment letters? If not, please send this letter to Mr. Arrellano to advise him that I know a Spanish speaking lawyer by the name of Mike Trabish, who rents office space in my building and whose telephone number is: (310) 939-7122. Will you give permission to have Mr. Trabish attempt to contact Mr. Arrellano at the Sierra Correctional Center in an effort to set up an interview and to discuss the bad faith assignment and/or to discuss representing Mr. Arrellano in the Progressive Federal Declaratory Relief matter just filed? If I do not hear from you within the next week, I will assume that you have no objection to Mr. Trabish making contact with Mr. Arrellano at the

ANGELO & DI MONDA  
A LIMITED LIABILITY PARTNERSHIP

Randall L. Winet, Esq.

Re: *Progressive West Insurance Company vs. Bun Bun Tran, et al.*

November 28, 2007

page 2

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Sierra Correctional Facility, where his deposition was taken, located at: *Sierra Conservation Center, 5100 O'Byrnes Ferry Road, Jamestown, CA 95327, (209-984-5291)*.

Is it your intent to have a default judgment entered against Mr. Arrellano in the Progressive Federal action enclosed herein? Is it your intent to arrange a lawyer to be representing Arrellano in the Federal complaint? If not, please immediately instruct Progressive to hire personal counsel to represent Arrellano in the Federal action. Enclosed please find a copy of my firm's Motion to Dismiss the Federal Complaint against my client and Arrellano on the grounds that the Federal Court is without jurisdiction. Please also give this Motion to Dismiss to Progressive and a personal counsel of your choosing to represent Mr. Arrellano in the Federal action. If this is not to be done, then please immediately arrange to have Mr. Trabish fly up to Sierra Correctional Facility to meet with Mr. Arrellano. Mr. Trabish is willing to do this whenever it is convenient for Mr. Arrellano.

Mr. McLaughlin once told me that Mr. Arrellano may be changing prison facilities. If this has already occurred, please indicate what prison Mr. Arrellano is currently confined at.

Finally, I consider Progressive's Federal lawsuit to be an interference with a protected property interest, one of many acts of interference.

I assume that you have also informed Mr. Arrellano of the value of his own emotional distress and punitive damage claim against Progressive pursuant to the case law of Betts vs. Allstate (1984) 154 Cal.App.3d 688. Someone is denying him his own lawsuit. As you know, my bad faith assignment specifically allows Mr. Arrellano to retain his own rights to sue Progressive for emotional distress and punitive damages. If I chose not to do this, I could have had Mr. Arrellano assign "all" bad faith claims, forcing him to waive his own personal bad faith claims under Murphy vs. Allstate Insurance (1976) 17 Cal.3d 937, 946, and Purcell vs. Colonial Insurance (1971) 20 Cal.App.3d 807, 817.

If you continue to refuse to cooperate with my requests, and if you continue to interfere with protected property interests, then I will seriously consider withdrawing any current willingness to allow Mr. Arrellano to retain his own emotional distress and punitive damages. How can you continue to be the sole means of communication with Mr. Arrellano when you are also cooperating with Progressive in providing only selective documentation to assist Progressive in filing the aforementioned Federal action against Mr. Arrellano and my client? Don't you see a

ANGELO & DI MONDA  
A LIMITED LIABILITY PARTNERSHIP

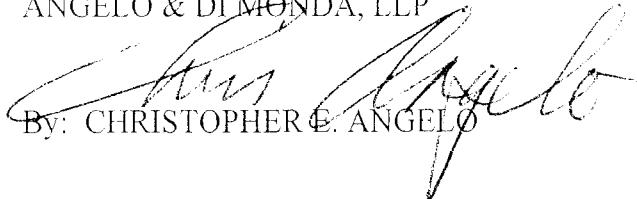
Randall L. Winet, Esq.  
Re: *Progressive West Insurance Company vs. Bun Bun Tran, et al.*  
November 28, 2007  
page 3

---

conflict-of-interest? Someone is ruining Mr. Arrellano's own potential tort rights. What are you doing to prevent this from happening? Frankly, I am amazed.

Very truly yours,

ANGELO & DI MONDA, LLP



By: CHRISTOPHER E. ANGELO

CEA/gh  
cc: Michael Trabish

000043

## **EXHIBIT 10**

## WINET, PATRICK &amp; WEAVER

A LAW CORPORATION

SAN DIEGO OFFICE  
 401 WEST A STREET, SUITE 1400  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE (619) 702-3903  
 FACSIMILE (619) 702-5432

440 SOUTH MELROSE DRIVE, SUITE 200  
 VISTA, CALIFORNIA 92081-6666  
 TELEPHONE (760) 758-4261  
 FACSIMILE (760) 758-6420

PALM SPRINGS OFFICE  
 340 SOUTH FARRELL DRIVE, SUITE A202  
 PALM SPRINGS, CALIFORNIA 92362  
 TELEPHONE (760) 416-1400  
 FACSIMILE (760) 416-1405

November 30, 2007

Chris Angelo  
 Angelo & Di Monda  
 1721 N. Sepulveda Boulevard  
 Manhattan Beach, CA 90266-5014

*Sent Via Facsimile*  
 (310) 939-0023

Re: Tran v. Arrellano  
 Our File: P21084

Dear Mr. Angelo:

I am in receipt of your November 28, 2007 letter. Previously, I informed you that I would not be sharing my communications with my client with you. Despite that fact, you continue to write letters to me to ask me specific questions about communications with Mr. Arrellano. Once again, I will not be sharing with you my communications with Mr. Arrellano because these conversations are protected by the attorney/client privilege.

Your November 28, 2007 letter also makes incorrect assumptions. Progressive Insurance did not consult with me or Mr. McLaughlin regarding its filing of a Complaint for Declaratory Relief. My first receipt of that document was the Complaint received with your letter. Contrary to the inferences contained in your letter, neither myself nor Mr. McLaughlin are involved in the insurance company's decision as to coverage in this case.

Your November 28, 2007 letter tells us that you have hand picked a lawyer to discuss your proposed bad faith assignment as well as the federal declaratory relief action for Mr. Arrellano, and then states that if you do not hear back from us within one week, you will have that attorney contact Mr. Arrellano. I find your comment that you will have an attorney contact my client regarding bad faith issues if you do not hear back from me within one week to be unethical. In fact, it violates the California Rules of Professional Responsibility and is grounds for individuals to be disciplined by the State Bar. You and Mike Trabish do not have the authority to contact Mr. Arrellano directly. If he decides that he wishes to utilize Mr. Trabish's services, I will contact you directly. Otherwise, any contact with him by you or Mr. Trabish is a violation of ethics in contacting a party who is represented in the litigation.

000044

Chris Angelo  
Re: Tran v. Arrellano  
November 30, 2007  
Page 2

Your November 28, 2007 letter further asks what our office intends to do regarding our representation involving Mr. Arrellano. Once again, my communications with him are privileged. I am not going to share attorney/client communications with you.

I resent the insinuation at the end of your letter that our office is assisting Progressive Insurance in filing the federal declaratory relief action. Your assertion and comments are not only unprofessional, but also inappropriate.

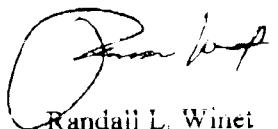
Finally, in my prior letter to you, I explained that the proposed Covenant Not to Execute from your office provided Mr. Arrellano no protection if your client's action was not successful against Progressive Insurance. For that reason, I explained that it appeared the Covenant Not to Execute was not providing Mr. Arrellano the protection personally since your client could still pursue him individually if your client was not successful against Progressive. In responses to my letter, you responded in short that "beggars could not be choosers." Is this still your position?

Preliminarily, it would appear that my original recommendation of your client obtaining a Covenant Not to Execute against Mr. Arrellano after judgment would protect both parties. As I'm sure you are aware, Mr. Arrellano does not have funds to satisfy any judgment obtained against him, and our objective is to protect him personally, which can be accomplished with a Covenant Not to Execute after judgment.

I anticipate that I will be speaking with Mr. Arrellano in the near future, so please advise if it is still your position that your client will only agree to the proposed Covenant Not to Execute forwarded by your office, or if he would be willing to sign a Covenant after judgment, fully protecting Mr. Arrellano.

Sincerely,

WINET, PATRICK & WEAVER



Randall L. Winet

RLW:cr

000045

## **EXHIBIT 11**

WINET, PATRICK & WEAVER

A LAW CORPORATION

SAN DIEGO OFFICE  
211 WEST 5 STREET, SUITE 1400  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE (619) 501-1600  
FACSIMILE (619) 502-5422

440 SOUTH MELROSE DRIVE, SUITE 200  
VISTA, CALIFORNIA 92081-6666  
TELEPHONE (760) 758-4261  
FACSIMILE (760) 758-6420

PALM SPRINGS OFFICE

340 SOUTH FARNELL DRIVE, SUITE 4200  
PALM SPRINGS, CALIFORNIA 92264-2722  
TELEPHONE (760) 548-1400  
FACSIMILE (760) 548-1402

April 18, 2008

Chris Angelo  
Angelo & Di Monda  
1721 N. Sepulveda Boulevard  
Manhattan Beach, CA 90266-5014

Re: Tran v. Arrellano  
Our File: P21084

Dear Mr. Angelo:

I am in receipt of your April 3, 2008 letter. Once again, you attempt to make statements and comments which are inappropriate and also incorrect. First, the first sentence of your letter references that our firm "receives business from A.I.G. Insurance Group." To set the record straight, I am aware of two cases wherein we defended an insured after A.I.G. took over a defense, and handled another case that was referred to our office by A.I.G. on a special issue. Our firm has not and does not regularly perform business for A.I.G. Insurance Group. Any insinuation by your office that our decisions or representation in this case is based upon some pre-existing or ongoing business relationship with A.I.G. Insurance is ridiculous and incorrect.

You spoke with Jim McLaughlin, from our firm regarding the responses to the Requests for Admissions by Mr. Arrellano. Mr. McLaughlin correctly told you that Mr. Arrellano would be answering the Requests for Admissions honestly and under oath as required by law.

Our office has spoken with Mr. Arrellano several times and we have also met with him. As I informed you in a number of previous letters, we have not and will not discuss our conversations with Mr. Arrellano. Those communications are protected by the attorney-client privilege.

Sincerely,

WINET, PATRICK & WEAVER



Randall L. Winet

## **EXHIBIT 12**

1 JAMES R. ROBIE, SBN 67303  
 2 KYLE KVETON, SBN 110805  
 2 RONALD P. FUNNELL, SBN 209897  
 3 ROBIE & MATTHAI  
 3 A Professional Corporation  
 4 500 South Grand Avenue, 15<sup>th</sup> Floor  
 4 Los Angeles, California 90071  
 5 (213) 706-8000 • (213) 624-2563 Fax  
kkveton@romalaw.com

6 Attorneys for Plaintiff PROGRESSIVE WEST  
 7 INSURANCE COMPANY

8 **UNITED STATES DISTRICT COURT**  
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
 11 PROGRESSIVE WEST INSURANCE )  
 11 COMPANY, an Ohio corporation, )  
 12 Plaintiff, )  
 13 vs. )  
 14 BUN BUN TRAN, LEONEL )  
 14 ARRELLANO, )  
 15 Defendants. )  
 16 \_\_\_\_\_

**CASE NO. 07 - CV 1999 JAH (POR)**  
**APPLICATION FOR DEFAULT**  
**JUDGMENT BY COURT AGAINST**  
**DEFENDANT LEONEL**  
**ARRELLANO; DECLARATION OF**  
**RONALD P. FUNNELL**

Date: June 2, 2008  
 Time: 2:30 p.m.  
 Ctrm: 11  
 940 Front Street  
 San Diego, CA 9210

17  
 18  
 19 **TO DEFENDANT LEONEL ARRELLANO AND HIS ATTORNEYS OF**  
 20 **RECORD:**

21 **PLEASE TAKE NOTICE THAT** on June 2, 2008, at 2:30 p.m. or as soon  
 22 thereafter as this matter may be considered by the above entitled Court, located at 940  
 23 Front Street, San Diego, California, Plaintiff Progressive West Insurance Company  
 24 ("Progressive") will present its application for a default judgment against defendant  
 25 Leonel Arrellano. The clerk has previously entered the default of said defendant on  
 26 April 9, 2008.

27 At this time Plaintiff requests the Court to enter a judgment of default based on  
 28 the Declaration of Ronald P. Funnell and the following matters:

1       1.    Defendant Leonel Arrellano is not a minor or incompetent person or in  
2 military service or otherwise exempted under the Soldiers' and Sailors' Civil Relief  
3 Act of 1940; and

4       2.    Defendant Leonel Arrellano was served with the summons and the  
5 complaint on November 17, 2007. Said defendant has not appeared in this action, nor  
6 answered the complaint.

7       3.    Plaintiff is entitled to judgment against said defendant on account of the  
8 claims pleaded in the complaint, to wit:

9           Plaintiff Progressive insured Defendant Leonel Arrellano for the policy period  
10 May 30, 2006 to November 30, 2006 under California Motor Vehicle Policy number  
11 16558999-00. On November 18, 2006, Defendant Arrellano collided with Defendant  
12 Bun Bun Tran's automobile, causing Mr. Tran serious injuries from which he remains  
13 comatose.

14           Following the accident, Mr. Arrellano was arrested for driving under influence  
15 of alcohol, driving without a license and fleeing the scene of the accident. The  
16 accident report assigned fault to Mr. Arrellano. In June 2007, he was sentenced to 6  
17 years in a California prison.

18           On or about January 26, 2007, attorney Anh Quoc Duy Nguyen wrote  
19 Progressive demanding that Progressive tender its liability policy limits within fifteen  
20 (15) days. (A copy of Attorney Nguyen's demand letter is attached to the Funnell  
21 Declaration as **Exhibit 1**.)

22           Plaintiff is informed and believes that at the time Attorney Nguyen sent his  
23 January 26, 2007 letter, he was not legally representing Bun Bun Tran, but, instead  
24 was representing Mr. Tran's mother. Plaintiff is further informed and believes that  
25 Mr. Tran's mother was not then guardian ad litem of Mr. Tran. As a result, Attorney  
26 Nguyen had no legal authority to settle the claims of Mr. Tran, nor did he have legal  
27 authority to release claims of Mr. Tran against any tort feasor.

28           Attorney Nguyen's demand did not offer a release or dismissal in exchange for

1 payment of the insurance benefits, but was subject to the condition precedent "of  
2 convincing [Nguyen] there are no other responsible parties, whether insured or not,  
3 causing this accident. If I am not convinced, I will state as much in a letter and there  
4 will be no settlement."

5 It was legally and factually impossible to convince Attorney Nguyen that there  
6 were no other responsible parties for causing this accident, given the facts and  
7 circumstances of the accident, and that Patricia Cole, in fact, paid Bun Bun Tran  
8 \$300,000 to settle the liability claim against her arising from this accident in July  
9 2007.

10 As a result of the above condition precedent, attorney Nguyen's demand was  
11 not an offer to settle within the policy's limits. Rather, the condition precedent of  
12 "convincing" Nguyen was outside of the policy and its stated limits.

13 Nevertheless, on February 2, 2007, Progressive sent a letter to Attorney  
14 Nguyen offering its policy limits, within 7 days of the demand. (A true and correct  
15 copy of this letter is attached to the Funnell Declaration as **Exhibit 2**). Attorney  
16 Nguyen rejected the offer and referred Mr. Tran's claim to attorney Christopher  
17 Angelo.

18 On or about May 8, 2007, Attorney Angelo filed a lawsuit on behalf of Mr.  
19 Tran against Mr. Arrellano alleging causes of negligence and negligence per se  
20 regarding the above mentioned automobile accident. It is clear from the  
21 correspondence, discovery and pleadings filed in that case that Mr. Angelo intended  
22 to obtain a judgment against Mr. Arrellano and then sue Progressive for breach of  
23 contract and breach of covenant of good faith and fair dealing for failing to settle Mr.  
24 Tran's claim within policy limits.

25 4. Plaintiff Progressive is entitled to a declaratory judgment against  
26 defendant Arrellano stating the following rights and duties of the parties under the  
27 involved policy of insurance:

28 That in handling Leonel Arrellano's claim arising from the November 18, 2006

1 motor vehicle accident, Progressive has discharged its obligations under the insurance  
2 policy and in accord with California law; and that its conduct in response to the  
3 January 26, 2007 letter from Attorney Nguyen was reasonable, was not in bad faith,  
4 and did not eliminate or jeopardize the \$15,000 policy limits available under the  
5 Progressive California Motor Vehicle Policy number 16558999-00 issued to insured  
6 defendant Leonel Arrellano.

7 The above stated facts are set forth in the accompanying declaration of Ronald  
8 P. Funnell, filed herewith.

9  
10 DATED: April\_\_\_\_, 2008

ROBIE & MATTHAI  
A Professional Corporation

11  
12 By:

13 JAMES R. ROBIE  
14 KYLE KVETON  
15 RONALD P. FUNNELL  
16 Attorneys for Plaintiff PROGRESSIVE WEST  
17 INSURANCE COMPANY  
18  
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**DECLARATION OF RONALD P. FUNNELL IN SUPPORT  
OF REQUEST TO ENTER DEFAULT JUDGMENT**

I, Ronald P. Funnell, declare as follows:

1. I am over 18 years old and am an attorney licensed to practice law in the state of California and am an attorney with the law firm of Robie and Matthai, attorneys representing Plaintiff Progressive West Insurance Company in this case. The facts stated in this declaration are from my own personal knowledge and I would and could testify competently to these facts if called to do so.

10       2.    Defendant Leonel Arrellano was served with the Summons and the  
11 Complaint on November 17, 2007.

12       3.    Defendant Leonel Arrellano has not appeared in this action and has not  
13 responded to the complaint within the 20-day time period provided by FRCP 12(a)(1).

4. Defendant Leonel Arrellano is not a minor nor an incompetent person.

15       5.     Defendant Leonel Arrellano is not a member of the military or otherwise  
16     exempted under the Soldiers' and Sailors' Civil Relief Act of 1940.

17       6.     Defendant Leonel Arrellano would not be able to attend any hearing  
18 regarding this matter because he is presently incarcerated at Sierra Conservation  
19 Center, 5100 O'Byrnes Ferry Road, Jamestown, CA. Mr. Arrellano is not represented  
20 by counsel in this action.

21 7. On or about January 26, 2007, attorney Anh Quoc Duy Nguyen wrote to  
22 Progressive demanding that Progressive pay its \$15,000 policy limits within 15 days.  
23 A true and correct copy of Nguyen's letter is attached as **Exhibit 1**.

24 | 111

25 //

26 //

27 (ii)

28 //

1 8. On February 2, 2007, Progressive sent a letter in response to Attorney  
2 Nguyen, offering its \$15,000 policy limits, and within 7 days of the demand. A true  
3 and correct copy of Progressive's letter is attached as **Exhibit 2**.

4 I declare under penalty of perjury under the laws of the State of California that  
5 the foregoing is true and correct.

6 Executed this \_\_\_\_\_ day of April 2007, at Los Angeles, California.

RONALD P. FUNNELL

## PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, 15th Floor, Los Angeles, CA 90071-2609.

On April 23, 2008, I served the foregoing document(s) described as:

**APPLICATION FOR DEFAULT JUDGMENT BY  
COURT AGAINST DEFENDANT LEONEL  
ARRELLANO; DECLARATION OF RONALD P.  
FUNNELL**

on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

Attorneys for Defendant, Bun Bun Tran:

Christopher E. Angelo, Esq.  
Joseph Di Monda, Esq.  
ANGELO & DI MONDA  
1721 No. Sepulveda Boule  
Manhattan Beach, CA 90266  
Telephone: (310) 939-0099  
Facsimile: (310) 939-0022

Defendant Leonel Arrellano, In Proper:

Leonel Arrellano, Inmate #F77654  
c/o Division of Adult Operations  
Sierra Conservation Center  
5100 O'Byrnes Ferry Road  
Jamestown, CA 95327

**(X) BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

**BY E-SERVICE:** I caused the above-referenced document(s) to be electronically served on all counsel of record through the Court's CM/ECF filing and service system.

**(X) (Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 23, 2008, at Los Angeles, California.

Windy Gale Tyler

LAW OFFICES OF  
ANH QUOC DUY NGUYEN & ASSOCIATES

Branch Offices:

**SAN GABRIEL**  
105 E. LAS TUNAS DRIVE  
SAN GABRIEL, CA 91776  
PHONE: (626) 284-2239

**SAN DIEGO**  
4745 CL CAJON BLVD., SUITE 101  
SAN DIEGO, CA 92126  
PHONE: (619) 284-0800

**15622 BROOKHURST STREET**  
WESTMINSTER, CALIFORNIA 92683

PHONE: (714) 531-8181  
FAX: (714) 531-9397

RESPOND TO:

- WESTMINSTER OFFICE
- SAN GABRIEL OFFICE
- SAN DIEGO

Case 3:07-cv-01999-JAH-POR Document 12-2 Filed 04/23/2008 Page 1 of  
January 26, 2007

Tiara Foster, Claims Representative  
Progressive Insurance Company  
6131 Orangethorpe Avenue, Suite 300  
Buena Park, CA 90620  
714.736.6300 general phone  
714.736.6321 direct  
714.736.6308 fax

Via Certified Mail with Return Receipt  
and Fax to: (714)736-6308

Re: My Client:

Bun Bun Tran

Your Insured/Defendant:

Leonel Arrellano

Date of Accident:

November 18, 2006

Your Claim No.:

060409287

Dear Ms. Foster:

Please be advised that I represent Bun Bun Tran, who was seriously injured because of your insured running a stop sign. Thereafter, your insured fled from the scene. He has been arrested and is currently awaiting a criminal hearing in February of this year. My client has been hospitalized at UC San Diego, Floor 8 East, Room 812A, in a comatose condition since November 18, 2006. I understand that you have learned about his condition and the facts behind this accident from Esurance, the auto insurance company of Bun Bun Tran. You therefore know that the medical expenses are approaching \$700,000 and Progressive has insufficient amounts of liability insurance.

My client is represented by his mother/guardian, Le Thi Nguyen. My client is hereby willing to be responsible for any and all medical and other bills so long as Progressive tenders all of its liability limits within 15 days from the date of this letter subject to the further condition precedent of convincing me that there are no other responsible parties, whether insured or not, causing this accident. If I am convinced, I will state as much in a letter. If I am not convinced, I will never state as much in a letter and there will be no settlement. Please also tell me, since it may bear on settlement, whether or not your insured received liquor at a Chili's restaurant shortly before the accident, and if so, which Chili's restaurant. We understand that Chili's was your insured's employer at the time of the accident.

Very truly yours,

Anh Q. D. Nguyen

Claims Office  
 6131 Orangethorpe Ave. Ste 300  
 Buena Park, CA 90620  
 Telephone: 714-736-6300  
 Facsimile: 714-736-6308

Underwritten by: **Progressive West Insurance Company**

Claim number: 060409287  
 Date of loss: 11/18/2006  
 Today's date: 02/02/2007

*Sent again on 4-5-07*

Law Offices Of Anh Q.D. Nguyen & Assoc  
 Attn: Anh Nguyen  
 15622 Brookhurst Street  
 Westminster, CA 92683

Case 3:07-cv-01999-JAH-POR Document 12-2 Filed 04/23/2008 Page 2 of

Your Client: Bun Bun Tran

Dear Mr. Nguyen:

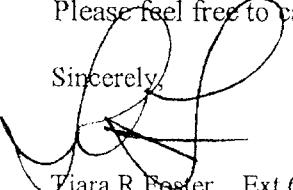
This will confirm our offer of \$15000 to settle your client's claim. Please be advised that this offer represents the policy limit. For your review, we have enclosed a copy of the declaration page.

You requested information regarding our insured's relationship with Chili's Restaurant and if he was served alcohol at this location. Unfortunately, we have not been able to locate our insured; therefore, we do not have a recorded statement from our insured regarding the facts of this loss.

Please convey this offer to your client(s) and advise me of the decision at your earliest convenience.

Please feel free to call with any questions or concerns.

Sincerely,

  
 Tiara R. Foster, Ext.6321  
 Claims Specialist

tiara\_r\_foster@progressive.com

TXF/tf

## **EXHIBIT 13**

LAW OFFICES OF  
ANH QUOC DUY NGUYEN & ASSOCIATES

Branch Offices:

1015 E. LAS TUNAS DR.  
SAN GABRIEL, CA. 91776  
PHONE: (626) 286-2239

15622 BROOKHURST STREET  
WESTMINSTER, CA 92683

ANH Q.D. NGUYEN

4745 EL CAJON BLVD.  
SUITE 101  
SAN DIEGO, CA. 92115  
PHONE: (619) 284-0800

PHONE: (714) 531-8181  
FAX: (714) 531-9397

March 14, 2007

Kendra R. Turner, Claims Representative  
Progressive West Insurance Company  
1455 Frazee Road, Suite 200  
San Diego, CA 92108  
408.281.5100 x3329  
408.224.5007 fax  
kendra\_turner@progressive.com

Re:	My Client:	Bun Bun Tran
	Your Claim No.	060409287
	Date of Loss:	November 18, 2006
	Your Insured:	Leonel Arrellano

Dear Ms. Turner:

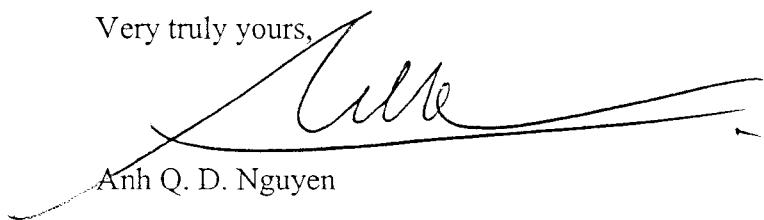
I have received your March 2, 2007 letter, which I must reject in its entirety. Firstly, you have never asked for an extension to my previous policy limits offers nor have you asked in your March 2, 2007 letter for a reinstatement of any policy limits settlement offer on behalf of my client from my office.

Your March 2, 2007 letter merely states that you are just now making an "effort to investigate and evaluate this claim." You also admit in this letter that you are "waiting for a demand from the City of San Diego for their property damage." When did you first become aware of any potential claim against your insured by the City of San Diego? Was it after a governmental tort claim was made against the City of San Diego? Have you also become aware, through the City of San Diego, of a criminal prosecution against Leonel Arrellano in which he has pled guilty and where he remains incarcerated? When did you first make an effort to obtain a police report for this accident? Enclosed is an extra copy of the police report, which my office obtained but which you never requested or discussed. How is it that you must still "investigate and evaluate"? How is it that my client is supposed to wait around for you to determine when it is convenient to advise us "of the progress of [your] investigation?"

As to the last paragraph of your March 2, 2007 letter, my above questions and enclosed police report is in response to your letter statement: "If you have any questions or other information that

has relevance to our consideration of your claim, please contact the undersigned." Please limit all of your future communications with my office to letter form. I sadly regret the arrogant and dismissive nature of your March 2, 2007 letter. The City of San Diego's alleged property damage claim could have been paid out of the money received from the Victims of Crime Fund. Your company's typical inability to communicate, except through form letters, has resulted in your insured remaining as a defendant in larger litigation. My office would have dismissed all claims against the world had Progressive West Insurance Company only been prompt, timely and polite.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anh Q. D. Nguyen". The signature is fluid and cursive, with a large, stylized 'A' at the beginning.

Anh Q. D. Nguyen

Enclosure: Copy of Traffic Collision Report

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I am a resident of the aforesaid county. I am over the age of eighteen years and not a party  
to the within action; my address is 1721 N. Sepulveda Blvd., Manhattan Beach, California 90266.5 On May 12, 2008, I served the foregoing document(s) described as **DEFENDANT BUN**  
6 **TRAN'S MOTION FOR SANCTIONS AGAINST PLAINTIFF PROGRESSIVE WEST INS.**  
7 **CO. AND ITS ATTORNEYS ROBBIE & MATTHAI; MEMORANDUM OF POINTS AND**  
8 **AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF JOSEPH DI MONDA,**  
9 **ESQ., CHRISTOPHER E. ANGELO, ESQ. AND ANH Q.D. NGUYEN, ESQ.** on the interested  
parties in this action, by placing the original/true copies thereof enclosed in a sealed envelope  
addressed as follows:10 **SEE ATTACHED SERVICE LIST**11 — I caused such envelope/package containing the document(s) to be delivered by hand to the  
offices of the addressee(s).12  The envelope was mailed with postage thereon fully prepaid. I am "readily" familiar with the  
13 firm's practice of collection and processing correspondence for mailing. It is deposited with  
14 U.S. Postal Service on that same day in the ordinary course of business. I am aware that on  
motion of a party served, service is presumed invalid if the postal cancellation date or  
postage meter date is more than one day after date of deposit for mailing an affidavit.15 — I deposited the above document(s) for facsimile transmission in accordance with the office  
16 practice of Angelo & Di Monda for collecting and processing facsimiles. I am familiar with  
17 the office practice of Angelo & Di Monda for collecting, processing, and transmitting  
facsimiles. The facsimile of the above document(s) was transmitted to the interested parties  
on the attached service list:18 Executed on May 12, 2008, at Manhattan Beach, California.19 I declare under penalty of perjury under the laws of the State of California that the above is  
true and correct.21 

---

22 S/Joseph Di Monda  
Joseph Di Monda

### Service List

James R. Robie  
ROBIE & MATTHAI  
James R. Robie  
500 South Grand Avenue  
15<sup>th</sup> Floor  
Los Angeles, CA 90071